

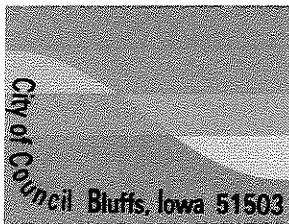
CITY CLERK  
(712) 328-4616

## AGENDA

**CITY COUNCIL STUDY SESSION  
COUNCIL CHAMBERS  
MONDAY, June 9, 2008  
3:45 P.M.**

- A. Review of Agenda
- B. ***Executive Session: Property acquisition***





CITY CLERK  
(712) 328-4616

COUNCIL AGENDA, CITY OF COUNCIL BLUFFS, IOWA  
REGULAR MEETING JUNE 9, 2008 7:00 P.M.  
COUNCIL CHAMBERS, 2ND FLOOR, CITY HALL  
209 PEARL STREET

**AGENDA**

**1. PLEDGE OF ALLEGIANCE**

**2. CALL TO ORDER**

**3. CONSENT AGENDA**

- A. Approval of agenda and tape recording of this proceeding be incorporated into official minutes
- B. Reading, correction and approval of minutes of the May 12, 2008 regular Council meeting, and the minutes of the teleconference special meeting on June 3, 2008
- C. Ordinance 5997, amending the zoning map by changing the district designation of property located along 5<sup>th</sup> Avenue, east and west of South 21<sup>st</sup> Street from its present designation as C-1/commercial to R-2/Two Family Residential
- D. Resolution 08-163, intent to vacate the east/west alley in Block 10, Mullin's Subdivision, City of Council Bluffs, Pottawattamie County, Iowa, and setting public hearing for 7:00 p.m. on June 23, 2008
- E. Resolution 08-164, intent to vacate South 15<sup>th</sup> Street abutting Blocks 4 and 5, both north/south alleys in Block 6 and South 17<sup>th</sup> Street abutting the north 82.5 feet of Blocks 6 and 7, all in Railroad Addition, City of Council Bluffs, Pottawattamie County, Iowa, and setting public hearing for 7:00 p.m. on June 23, 2008

**4. PUBLIC HEARINGS:**

- A. Resolution 08-116, authorizing disposal of certain City property by granting a perpetual fiber optic cable easement to MidAmerican Energy
- B. Resolution 08-117, authorizing disposal of certain City property by granting a perpetual electric and communications easement to MidAmerican Energy
- C. Resolution 08-157, authorizing acceptance of two easements subject to the consent of the MidAmerican Energy Company in connection with the establishment of a utilities corridor
- D. Resolution 08-158, authorizing the acquisition of an easement for public and private utilities right of way from the MidAmerican Energy Company
- E. Resolution 08-165, determining an area of the City to be an economic development area, and that the rehabilitation, conservation, redevelopment, development, or a combination thereof, of such area is necessary in the interest of the public health, safety or welfare of the residents of the City; designating such area as appropriate for an Urban Renewal Project; and adopting Amendment No. 1 to the old Airport Urban Renewal Plan therefor



- F. Resolution 08-166, authorizing disposal of City property described as a 60± foot by 90± foot portion of Fairview Cemetery lying west of 514 Harrison Street, as shown on the attached map and described on the attached survey
- G. Resolution 08-167, authorizing the disposal of certain City property by granting an ingress-egress access easement to MidAmerican Energy Company
- H. Resolution 08-168, approving an amended annual budget for the Fiscal year ending June 30, 2008
- I. Resolution 08-169, approving the plans, specifications, form of contract and cost estimate for the site work and paving phase of the Regional Fire Training Facility project

**5. ORDINANCES ON SECOND READING:**

- A. Ordinance 5981 (continued from March 24, 2008), amending the zoning map by changing the district designation of certain property located at 427 21<sup>st</sup> Avenue from its present designation of R-2/Two Family Residential to C-2/Commercial
- B. Ordinance 5996 (continued from May 12, 2008) amending Chapter 1.10 "Administration and Personnel" of the Municipal Code by repealing and reenacting Section 1.10.020 "Compensation of Mayor"
- C. Ordinance 6000, amending the Municipal Code, Title 13, entitled "Buildings and Construction", Chapter 13, "Licensing of the Mechanical Trade" by amending parts of Section 13.10.070 and 13.10.080 to be codified
- D. Ordinance 6001, amending Chapter 4.12 "Solid Waste Collection and Disposal" of the Municipal Code by repealing and reenacting Sections 4.12.010, 4.12.020, 4.12.040, 4.12.060 and 4.12.110
- E. Ordinance 6002, amending Chapter 2.08 "Schedule of Fees" of the Municipal Code by repealing Section 2.08.040 and by enacting a new Section 2.08.040 to amend fees for solid waste collection and disposal

**6. ORDINANCES ON FIRST READING:**

- A. Ordinance 6003, amending the zoning map by changing the district designation of certain property located along the west side of State Orchard Road, north of Greenvview Road in Council Bluffs from its present designation as R-3/Low Density Multi-Family Residential with a planned residential overlay to C-2/Commercial, and setting public hearing for 7:00 p.m. on June 23, 2008
- B. Ordinance 6004, repealing Ordinances 5990 and 5991, and to amend the effective date from Ordinances 5984, 5988, and 5989, all passed and approved on April 14, 2008

**7. RESOLUTIONS:**

- A. Resolution 08-170, amending the development plan for Mall of the bluffs to construct a new Bucky's Express gasoline station and convenience store adjacent to Madison Avenue, between the entrance to the Mall of the Bluffs and the Interstate 80 off-ramp
- B. Resolution 08-171, concurring with Iowa Department of Transportation rejecting all bids for the fiber and PTZ camera installation
- C. Resolution 08-172, making changes to the authorized staffing levels of the City

- D. Resolution 08-173, authorizing City officials to endorse checks, notes, drafts, bills of exchange and acceptances on behalf of the City in connection with its accounts at people's National Bank, Midstates Bank, US Bank, Liberty Bank and Council Bluffs Savings Bank.
- E. Resolution 08-174, authorizing the Mayor and City Clerk to execute an agreement with HGM Associates for engineering services in connection with the Avenue G Viaduct/Corridor Project V
- F. Resolution 08-175, authorizing the Mayor to acquire property at 850 West Graham Avenue as part of the Playland Park Lane mitigation project.
- G. Resolution 08-176, authorizing a joint application to the Iowa Department of Economic Development by the City of Council Bluffs to the Iowa Department of Economic Development by the City and Telmar Network Technology for benefits under the community economic betterment account and the targeted jobs withholding tax credit programs; and approving the withholding and development agreements between Telmar Network Technology and the City of Council Bluffs
- H. Resolution 08-177, accepting the work of R.D. Blue in connection with the Locust Lodge Avenue Rehab
- I. Resolution 08-178, authorizing the Mayor to execute a Development Agreement with HCC Investments LLC and St. Patrick Catholic Church
- J. Resolution 08-179, appointing Bankers Trust Company, of Des Moines, Iowa, to serve as paying agent, bond registrar and transfer agent, approving the paying agent and bond registrar and transfer agent agreement and authorizing the execution of the agreement
- K. Resolution 08-180, authorizing and providing for the issuance of \$7,615,000 general obligation bonds, series 2008 and levying a tax to pay the bonds

#### **8. RECEIVE AND FILE ITEMS:**

- A. Zoning Board of Adjustment, Annual Report, 2007
- B. One Offer to Buy, south 5 feet of vacated east/west alley adjacent to Lot 12, Block 7 North 45 feet – west 10 feet of Lot 11, Block 7 (Jolene Wetmore)
- C. Three Notices of Expiration of Rights of Redemption:
  - 1) 1428 S. 8<sup>th</sup> Street
  - 2) 431 Park Avenue
  - 3) 1720 Tostevin Street

#### **9. APPLICATIONS FOR PERMITS AND CANCELLATIONS:**

- A. Application for renewal of liquor license:
  - 1) American Legion, 716 4<sup>th</sup> Street
  - 2) Madison Avenue Ampride, 1836 Madison Avenue
  - 3) Thunderbowl, 1900 Madison Avenue
- B. Application for new liquor license (change of ownership):
  - 1) No Frills Supermarkets, 1801 Valley View Drive
  - 2) No Frills Supermarkets, 1817 West Broadway
- C. Application for modification of premises, outdoor dining:

- 1) Quaker Steak and Lube, 3320 Mid America Drive
- 2) Railway Inn, 115 South 12<sup>th</sup> Street

D. Application for Adult Entertainment Business License, Romantix Adult Emporium, 3216 First Avenue

E. Application for Iowa retail Cigarette/Tobacco Permit:

- |  |   |
|--|---|
| 1) Ameristar Casino (Boat), 2200 River Road            | 20) HyVee Drugstore, 757 W Broadway                       |
| 2) Ameristar Casino (Gift Shop)                        | 21) HyVee Foods, 1706 N 16 <sup>th</sup> Street           |
| 3) Ameristar Casino (Sports Bar)                       | 22) HyVee Foods, 1745 Madison Avenue                      |
| 4) Atherton Automotive, 2900 W Broadway                | 23) Lake Manawa Convenience, 1115 Veteran's Mem Hwy       |
| 5) Billy's 66, 2659 W Broadway                         | 24) Lakeside Ampride, 4040 S. Expressway                  |
| 6) Brewski's Beverage, 726 Creek Top                   | 25) Madison Avenue Ampride, 1836 Madison                  |
| 7) Bucky's Express #16, 15 N 16 <sup>th</sup> Street   | 26) Mario's Bar & Laundry, 719 S Main                     |
| 8) Bucky's Express #27, 2713 S 24 <sup>th</sup> Street | 27) Metro Wine & Spirits, 3418 W Broadway                 |
| 9) Bucky's Express #17, 1759 Madison                   | 28) Mexico Lindo Market, 2210 W Broadway                  |
| 10) Bucky's Express #34, 3501 W Broadway               | 29) QuikTrip #575, 1749 W Broadway                        |
| 11) Casey's #2284, 1030 Veterans Memorial Hwy          | 30) Sapp Bros, 2608 S 24 <sup>th</sup> Street             |
| 12) Casey's #2096, 2301 S 24 <sup>th</sup> Street      | 31) Speedee Mart #1512, 3624 9 <sup>th</sup> Avenue       |
| 13) Casey's #34, 511 23 <sup>rd</sup> Avenue           | 32) Super Quik Stop, 2800 Twin City Drive                 |
| 14) D & J's Fuel Stop, 430 S 35 <sup>th</sup> Street   | 33) Super Saver IV, 1141 N. Broadway                      |
| 15) D & S Xpress, 2924 N Broadway                      | 34) T's Tavern, 2400 9 <sup>th</sup> Avenue               |
| 16) Fareway Stores #073, 310 McKenzie Avenue           | 35) Tienda Mexicana, 620-622 S. Main                      |
| 17) The Filling Station, 1531 2 <sup>nd</sup> Avenue   | 36) Tobacco Hut #6, 3134 Manawa Dr                        |
| 18) Harrah's Casino & Hotel, 1 Harrah's Blvd           | 37) Tobacco Hut #14, 1925 W Broadway                      |
| 19) Horseshoe Casino, 2701 23 <sup>rd</sup> Avenue     | 38) Travel Center of America, 3210 S. 7 <sup>th</sup> St. |

**10. CITIZENS REQUEST TO BE HEARD:**

- A. Mr. John Kobold, 465 Park Avenue
- B. Mr. Ed Kermoade, 3127 10<sup>th</sup> Avenue

**11.**

**ADJOURNMENT**

## RECORD OF PROCEEDINGS

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<b>CALL TO ORDER</b>	A regular meeting of the Council Bluffs City Council was called to order by Mayor Tom Hanafan at 7:00 p.m., May 12, 2008.
<b>ATTENDANCE</b>	Present: Council members Darren Bates, Scott Belt, Lynne Branigan, Matt Schultz, Matt Walsh. Mayor Tom Hanafan. Staff present: Richard Wade, City Attorney; Judith Ridgeley, City Clerk
<b>PRESENTATION</b>	Franklin Elementary students presented a quilt depicting the history of Council Bluffs to the City Council to be displayed in City buildings. Mayor Hanafan and City Council thanked the students and their teacher.
<b>CONSENT AGENDA</b>	Walsh and Schultz moved and seconded approval of the Consent Agenda as presented. Unanimous
<b>PUBLIC HEARINGS</b> Resolution 08-116	Schultz and Bates moved and seconded to continue Resolution 08-116, granting a perpetual fiber optic cable easement to MidAmerica Energy, until the regular meeting of June 9, 2008 at 7:00 p.m. Unanimous
Resolution 08-117	Walsh and Schultz moved and seconded to continue Resolution 08-117, granting a perpetual electric and communications easement to MidAmerica Energy, until the regular meeting of June 9, 2008 at 7:00 p.m. Unanimous
Resolution 08-118	Held public hearing granting a perpetual construction and access easement to Southwest Iowa Renewable Energy LLC. Walsh and Schultz moved and seconded approval of Resolution 08-118. 4 Aye, 1 Nay (Belt)
Resolution 08-140	Held public hearing regarding renaming the West South Omaha Bridge Road to veteran's memorial Highway. Robert Green, 121 Zenith Drive, Phil Killian, 903 Greenwood, Lynne Christensen, 716 S. 4 <sup>th</sup> Street and Norma Ferris, 213 Westwood Drive were present to support the Resolution. Branigan and Bates moved and seconded approval of Resolution 08-140. 4 Aye, 1 Nay (Walsh)
Resolution 08-141	Held public hearing directing the sale of \$7,615,000 in general obligation bonds, Series 2008 to Morgan Keegan & Company, Memphis, TN, at a rate of 3.884%. Walsh and Schultz moved and seconded approval of Resolution 08-141. Unanimous
Ordinance 5997	Held public hearing to amend zoning map for properties located along 5 <sup>th</sup> Avenue, east and west of South 21 <sup>st</sup> Street from C-1 to R-2. Belt and Branigan moved and seconded approval of Ordinance 5997. Unanimous
<b>ORDINANCES ON SECOND READING</b> 5996	Walsh and Branigan moved and seconded approval of Ordinance 5996, amending the compensation of the Mayor to begin in 2010. Belt moved to amend the motion by setting the base salary at \$92,915, to increase at a yearly rate of 3.5% regardless of the CPI. The amendment died for lack of a second. Branigan and Walsh amended the original motion to continue the ordinance until the regular meeting of June 9, 2008 at 7:00 p.m. 3 Aye, 2 Nay (Bates,

## **RECORD OF PROCEEDINGS**

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Schultz)

### **ORDINANCES ON FIRST READING 6000**

Walsh and Bates moved and seconded approval of Ordinance 6000 amending Title 13 "Buildings and Construction" of the Municipal Code. Unanimous

#### **Ordinance 6001**

Schultz and Branigan moved and seconded approval of Ordinance 6001, amending Chapter 4.12 "Solid Waste Collection and Disposal" of the Municipal Code. Unanimous

#### **Ordinance 6002**

Bates and Branigan moved and seconded approval of Ordinance 6002, amending Chapter 2.08 "Schedule of Fees" of the Municipal Code. Unanimous

### **RESOLUTIONS Resolution 08-142**

Walsh and Bates moved and seconded approval of Resolution 08-142, authorizing the Mayor to execute an agreement with Lueder Construction to build the Public Works Fleet Maintenance Facility. Unanimous

#### **Resolution 08-143**

Branigan and Schultz moved and seconded approval of Resolution 08-143, accepting the work of Tab Construction in connection with the Stormwater Management, Sewer Big Lake Bridge. Unanimous

#### **Resolution 08-144**

Walsh and Belt moved and seconded approval of Resolution 08-144, authorizing a joint application to the Iowa Department of Economic Development by the Council Bluffs Enterprise Zone Commission and Welcome Homes, Inc. for enterprise zone benefits. Unanimous

#### **Resolution 08-145**

Belt and Branigan moved and seconded approval of Resolution 08-145, authorizing the Mayor to execute the Order Assessing Penalty against Tobacco Hut #6 for a violation of Iowa tobacco laws. Unanimous

#### **Resolution 08-146**

Branigan and Bates moved and seconded approval of Resolution 08-146, authorizing the Mayor to execute the Order Accepting the Acknowledgement/Settlement Agreement from Tobacco Hut #14 for a violation of Iowa tobacco laws. Unanimous

#### **Resolution 08-147**

Branigan and Walsh moved and seconded approval of Resolution 08-147, authorizing the Mayor to execute the Order Assessing Penalty against Hy-vee Drugstore for a second violation of Iowa tobacco laws. Unanimous

#### **Resolution 08-148**

Belt and Walsh moved and seconded approval of Resolution 08-148, authorizing and setting the annual assessment for the Mosquito Creek #22 levee drainage district. Unanimous

#### **Resolution 08-149**

Belt and Branigan moved and seconded approval of Resolution 08-149, authorizing and setting the annual assessment for the West Lewis #35 levee drainage district. Unanimous

#### **Resolution 08-150**

Belt and Bates moved and seconded approval of Resolution 08-150, authorizing and setting the annual assessment for the Sieck #32 levee drainage district. Unanimous

## **RECORD OF PROCEEDINGS**

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<b>Resolution 08-151</b>	Bates and Branigan moved and seconded approval of Resolution 08-151, authorizing the creation of one full time recycling aide position at the Recyling Center. Unanimous
<b>Resolution 08-152</b>	Bates and Walsh moved and seconded approval of Resolution 08-152, authorizing the Mayor to sign a water tower and ground space lease agreement for Rew Memorial Tower, Buena Vista Circle Council Bluffs, Iowa. Unanimous
<b>Resolution 08-153</b>	Bates and Schultz moved and seconded approval of Resolution 08-153, authorizing the Mayor to execute the fourth addendum to the agreement by and between the City, Iowa West Foundation, and CB Landscape Trust for Avenue G Beautification Improvements. 5 Aye
<b>Resolution 08-154</b>	Belt and Schultz moved and seconded approval of Resolution 08-154, authorizing the Mayor to execute an agreement with R. D. Blue Construction, Inc., for the 31 <sup>st</sup> Street Improvements, Phase II, 2 <sup>nd</sup> Avenue to Avenue B. Unanimous
<b>Resolution 08-155</b>	Walsh and Schultz moved and seconded to DENY Resolution 08-155, rescinding the award of a bid from Collins Properties, Inc. as the company is now in compliance with the Davis-Bacon Wage Act. Unanimous
<b>Resolution 08-156</b>	Schultz and Walsh moved and seconded approval of Resolution 08-156, intent to dispose of City property by granting an ingress-egress easement to MidAmerica Energy Company and setting public hearing for 7:00 p.m. on June 9, 2008. Unanimous
<b>Resolution 08-157</b>	Walsh and Bates moved and seconded to continue Resolution 08-157, authorizing acceptance of two easements subject to consent of MidAmerica Energy Company in connection with the establishment of a utilities corridor, until the regular meeting of June 9, 2008 at 7:00 p.m. Unanimous
<b>Resolution 08-158</b>	Schultz and Walsh moved and seconded to continue Resolution 08-158, authorizing the acquisition of an easement for public and private utilities right of way from the MidAmerica Energy Company until the regular meeting of June 9, 2008 at 7:00 p.m. Unanimous
<b>MAYOR APPOINTMENTS</b>	Walsh and Bates moved and seconded to concur with the Mayor's appointment to General Contractor Board of Peers. Unanimous
<b>RECEIVE AND FILE ITEMS</b>	Walsh and Branigan moved and seconded to receive and file the cash balance statement of April 30, 2008; the list of bills for April 30, 2008; one offer to buy City property; and three notices of expiration of rights of redemption. Unanimous
<b>APPLICATIONS FOR PERMITS OR CANCELLATIONS</b>	<p>Walsh and Bates moved and seconded approval of renewal of liquor license for Spillway Grill and Bar. 4 Aye, 1 Nay (Schultz)</p> <p>Walsh and Bates moved and seconded approval of renewal of liquor license for: Biggs, Billy's 66, Bottom's Up, Caddy Shack, Eddy's 503, Eddy's 611, Eddy's 1839, G's Amoco, Hy-Vee, I-80 Liquor, J &amp; B's Lounge, Kiwi Shop, Lansky's and Regal Lanes. Unanimous</p>



## **RECORD OF PROCEEDINGS**

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Schultz and Branigan moved and seconded to continue action regarding the request for outdoor service at Railway Inn until the regular meeting of June 9, 2008 at 7:00 p.m. Unanimous

Walsh and Branigan moved and seconded approval of application for new liquor license, pending health inspection, for T'z. Unanimous

Schultz and Bates moved and seconded approval for temporary 5 day liquor license for St. Peter's All School Reunion. Unanimous

Belt and Walsh moved and seconded approval of retail cigarette/tobacco permit for Kum & Go #219 and Kum & Go #220. Unanimous

### **CITIZEN'S REQUEST TO BE HEARD**

### **OTHER BUSINESS**

### **ADJOURNMENT**

Belt and Bates moved and seconded to adjourn the meeting at 7:53 p.m. Unanimous

The tape recording of this proceeding, though not transcribed, is part of the record of each respective action of the Council. The tape recording of this proceeding is incorporated into these official minutes of this Council meeting as if they were transcribed herein.

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Thomas P. Hanafan, Mayor

ATTEST:

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Judith H. Ridgeley, City Clerk

## **RECORD OF PROCEEDINGS**

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**CALL TO ORDER** A special meeting via phone conference by the Council Bluffs City Council was called to order by Matt Walsh, Council Member at 2:32 p.m. on Wednesday, June 3, 2008.

**ATTENDANCE** Council members present: Matt Walsh  
Council members present by telephone conference call: Lynne Branigan and Matt Schultz  
Staff present: Richard Wade, City Attorney; Marcia Worden, Deputy City Clerk; and Judith Ridgeley, City Clerk

**APPLICATIONS  
FOR PERMITS AND  
CANCELLATIONS** Schultz moved to continue Item 1C, modification of premises for Quaker Steak and Lube, to serve alcohol in an outdoor area, until the regular meeting of June 9, 2008 at 7:00 p.m. VOICE VOTE: 3 Aye

Schultz and Branigan moved and seconded approval of three applications for special events as follows:  
1) Ringling Brothers Barnum & Bailey Circus at Mid-America Center on June 4 thru June 6, 2008;  
2) Queen of Apostles Corpus Cristi Procession parade, June 8, 2008;  
and  
3) Relay for Life Run/Walk with fireworks display on June 7, 2008.  
VOICE VOTE: 3 Aye

**ADJOURNMENT** Branigan and Schultz moved and seconded to adjourn the meeting at 2:35 p.m.

The tape recording of this proceeding, though not transcribed, is part of the record of each respective action of the Council. The tape recording of this proceeding is incorporated into these official minutes of this Council meeting as if they were transcribed herein.

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Thomas P. Hanafan, Mayor

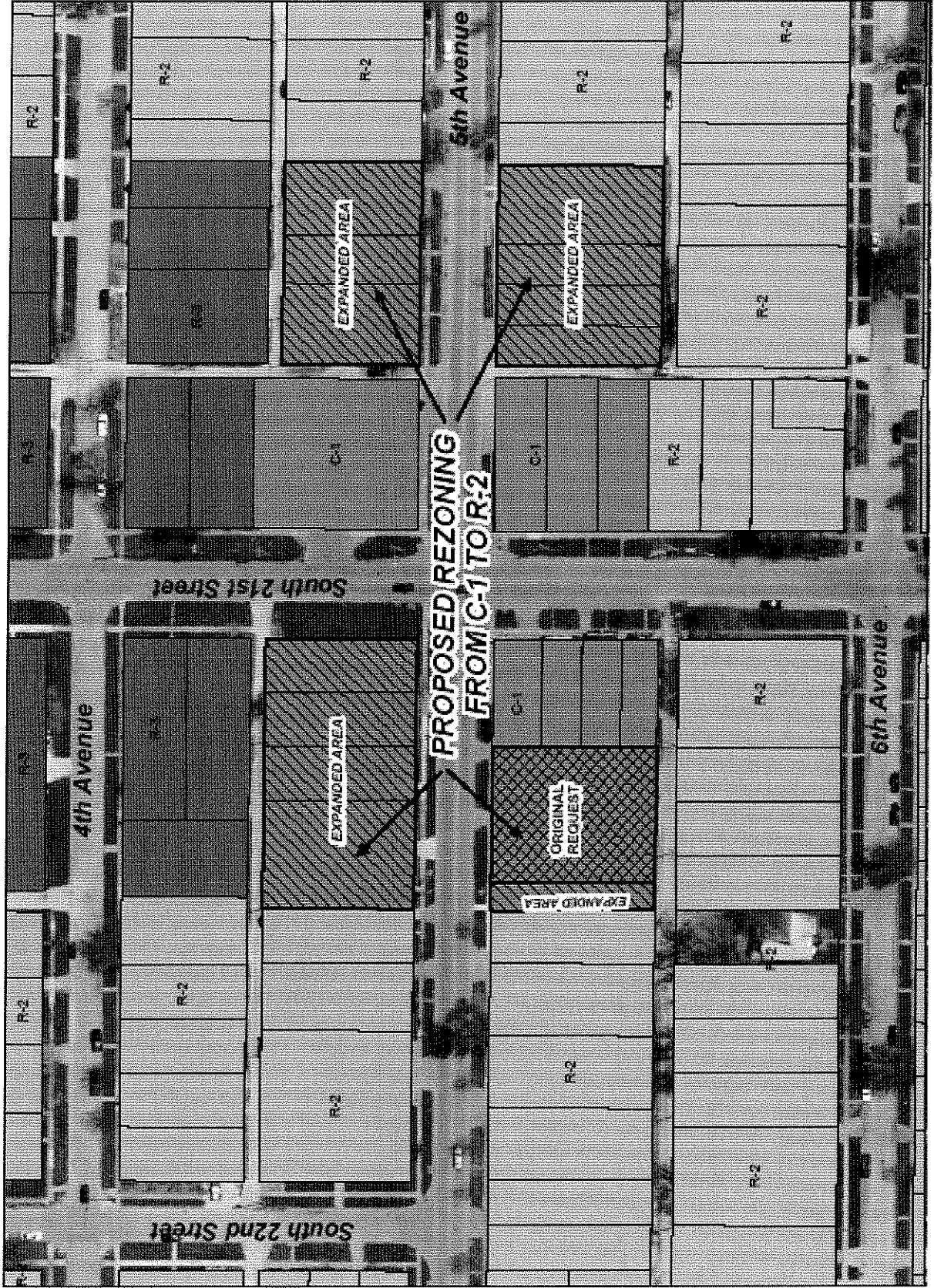
ATTEST:

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Judith H. Ridgeley, City Clerk

## Council Communication

<p>Department: Community Department Case No. ZC-08-008 Applicant: Robert Daley and Community Development Department</p>	<p>Ordinance No.    <u>5997</u></p>	<p>Council Meeting: April 28, 2008 Planning Commission: April 8, 2008 First Reading:    <u>April 28, 2008</u> Second Reading: <u>May 12, 2008</u> Third Reading:    <u>June 9, 2008</u></p>
<b>Subject</b>		
<p>Request of Robert Daley, 28837 Highway 6, Treynor, IA 51575 to rezone Lots 3, 4 and the East ½ of Lot 5, Block 5, Squire's Addition from C-1 Commercial to R-2/Two Family Residential. The Community Development Department expanded the area to include Lots 1 through 5, Block 1 and the West ½ of Lot 5, Block 5, Squire's Addition along with Lots 12 through 17, Block 3 and Lots 6 through 11, Block 4, Van Brunt and Rice's Addition. These properties are located along 5<sup>th</sup> Avenue, east and west of South 21<sup>st</sup> Street as shown on the attached map.</p>		
<b>Background</b>		
<p>Robert Daley is the legal option holder of Lots 3, 4 and the East ½ of Lot 5, Block 5, Squire's Addition. This property, which is currently vacant, is located on the south side of 5<sup>th</sup> Avenue, west of South 21<sup>st</sup> Street (shown as original request) and is zoned C-1 Commercial. Mr. Daley is requesting the property be rezoned to R-2/Two Family Residential in order to allow the construction of two single-family structures. The Community Development Department expanded the request to include rezoning Lots 1 through 5, Block 1 and the West ½ of Lot 5, Block 5, Squire's Addition along with Lots 12 through 17, Block 3 and Lots 6 through 11, Block 4, Van Brunt and Rice's Addition in order to bring 11 residential structures into compliance with the Zoning Ordinance.</p> <p>Land uses surrounding the subject properties are all residential in nature with the exception of the northeast, southeast and southwest corners of the intersection of 5<sup>th</sup> Avenue and South 21<sup>st</sup> Street which are a mixture of commercial and residential uses. Surrounding zoning is shown on the attached map.</p> <p>Phyllis Harms, 2014 5<sup>th</sup> Avenue, contacted staff in opposition of rezoning her home to a residential classification because she is considering reopening her dog grooming business at this location. Following certain regulations, dog grooming can be considered a home occupation. No other property owner is opposed to the proposed rezoning.</p>		
<b>Discussion</b>		
<p>The proposed rezoning will allow the construction of two single family structures on property which is currently vacant and will bring 11 residential uses into compliance with the Zoning Ordinance. Three of the four corners of this intersection will remain C-1 to allow for the continuation of the existing neighborhood commercial uses.</p>		
<b>Recommendation</b>		
<p>The Community Development Department recommends rezoning Lots 1 through 5, Block 1, Lots 3, 4, and 5, Block 5, Squire's Addition along with Lots 12 through 17, Block 3 and Lots 6 through 11, Block 4, Van Brunt and Rice's Addition from C-1 Commercial to R-2/Two Family Residential.</p>		
<b>Public Hearing</b>		
<p>Robert Daley, 28837 Highway 6 appeared before the Planning Commission in favor of the request. No one appeared in opposition.</p>		
<b>Planning Commission to City Council</b>		
<p>The Planning Commission recommends rezoning Lots 1 through 5, Block 1, Lots 3, 4, and 5, Block 5, Squire's Addition along with Lots 12 through 17, Block 3 and Lots 6 through 11, Block 4, Van Brunt and Rice's Addition from C-1 Commercial to R-2/Two Family Residential.</p>		
<p>VOTE:    Aye   8        Nay   0        Abstain   0        Absent   2        Vacant   1        Motion Carried.</p>		
<p><b>Attachments:</b> Map showing proposed rezoning area and surrounding zoning.</p>		
<p><b>Prepared By:</b> Rebecca Sall, Planning Technician, Community Development Department</p>		



CASE #ZC-08-008

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Prepared by: City of Council Bluffs Legal Department, 209 Pearl Street, Council Bluffs, IA 51503 (712) 328-4620  
Return to: City Clerk, 209 Pearl Street, Council Bluffs, IA 51503

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ORDINANCE NO. 5997

AN ORDINANCE TO AMEND THE ZONING MAP OF THE CITY OF COUNCIL BLUFFS, IOWA, AS ADOPTED BY REFERENCE IN SECTION 15.02.040 OF THE 2005 MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA, BY CHANGING THE DISTRICT DESIGNATION OF CERTAIN GROUNDS, PREMISES AND PROPERTY LOCATED ALONG 5<sup>TH</sup> AVENUE EAST AND WEST OF SOUTH 21<sup>ST</sup> STREET IN COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA, FROM ITS PRESENT DESIGNATION AS C-1/COMMERCIAL TO R-2/TWO FAMILY RESIDENTIAL, AS SET FORTH AND DEFINED IN CHAPTERS 15.14 AND 15.09 OF THE MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA.

BE IT ORDAINED  
BY THE CITY COUNCIL  
OF THE  
CITY OF COUNCIL BLUFFS, IOWA:

SECTION 1. That the Zoning Map of the City of Council Bluffs, Iowa, as adopted by reference in Section 15.02.040 of the Municipal Code of the City of Council Bluffs, Iowa, be and the same is hereby amended by changing the district designation of certain grounds, property and premises located along 5<sup>th</sup> Avenue, east and west of South 21<sup>st</sup> Street, as shown on the Attachment, and legally described as follows:

Lots 1 through 5, Block 1, Lots 3, 4, and 5, Block 5, Squire's Addition, along with Lots 12 through 17, Block 3, and Lots 6 through 11, Block 4, Van Brunt and Rice's Addition in Council Bluffs, Pottawattamie County, Iowa,

from its present designation as C-1/Commercial to R-2/Two Family Residential, as set forth and

defined in Chapters 15.14 and 15.09 of Title 15 "Zoning" of the 2005 Municipal Code of Council Bluffs, Iowa.

SECTION 2. Repealer. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. Effective Date. This ordinance shall be in full force and effect from and after its final passage, approval and publication, as by law provided.

PASSED  
AND  
APPROVED June 9, 2008

\_\_\_\_\_  
THOMAS P. HANAFAN Mayor

Attest: \_\_\_\_\_  
JUDITH RIDGELEY City Clerk

FIRST CONSIDERATION: April 28, 2008  
SECOND CONSIDERATION: May 12, 2008  
PUBLIC HEARING: May 12, 2008  
THIRD CONSIDERATION: June 9, 2008

Planning Case No. ZC-08-008

**Council Communication**

Department: Community Development Case #SAV-08-003 Applicant: Community Development Department	Resolution of Intent No. <u>08-164</u>  Resolution to Dispose No. _____	City Council: 6-9-08 Planning Commission: 05/13/08 Set Public Hearing: <u>06/09/08</u> Public Hearing:
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**Subject/Title**

Request of the Community Development Department to vacate certain rights-of-way in Railroad Addition lying north of 23<sup>rd</sup> Avenue and south of Union Pacific Railroad yard as follows:

1. South 15<sup>th</sup> Street abutting Blocks 4 and 5
2. Both north/south alleys in Block 6
3. South 17<sup>th</sup> Street abutting the North 82.5 feet of Blocks 6 and 7

**Background/Discussion**

The City of Council Bluffs has recently purchased all of Blocks 5 and 6 (except the North 15 feet) and the North 1/2 of Block 7 (except the North 15 feet), Railroad Addition. These properties are located north of 23<sup>rd</sup> Avenue and south of the UPRR yard between South 15<sup>th</sup> and South 18<sup>th</sup> Streets. The Community Development Department is proposing vacation of a portion of South 15<sup>th</sup> and South 17<sup>th</sup> Street and the north/south alleys in Block 6 as shown on the attached map in order to assemble these parcels which will be used for additional 23<sup>rd</sup> Avenue right-of-way, a pedestrian/bicycle trail and open/green space. The City will retain ownership of all vacated right-of-way.

William and Mary Phillips own the property at 2210 South 17<sup>th</sup> Street. Access to this property will not be affected by the vacation of South 17<sup>th</sup> Street because access to this property is via 23<sup>rd</sup> Avenue. Prior to the Planning Commission meeting, the Phillips' asked that the right-of-way adjacent to their property not be vacated. It has been removed from the recommendation.

Overhead and underground facilities are located within the subject portions of South 15 and South 17<sup>th</sup> Streets. Utility easements will need to be retained

**Recommendation**

The Community Development Department recommends vacating South 15<sup>th</sup> Street right-of-way abutting Blocks 4 and 5, both north/south alleys in Block 6 and South 17<sup>th</sup> Street right-of-way abutting the North 82.5 feet of Blocks 6 and 7, all in Railroad Addition, subject to an easement being retained in these portions of South 15<sup>th</sup> and South 17<sup>th</sup> Streets.

**Public Hearing**

Gayle Malmquist appeared before the Planning Commission in favor of the request. No one appeared in opposition.

**Planning Commission Recommendation**

The Planning Commission recommends vacating South 15<sup>th</sup> Street right-of-way abutting Blocks 4 and 5, both north/south alleys in Block 6 and the South 17<sup>th</sup> Street right-of-way abutting the north 82.5 feet of Blocks 6 and 7, all in Railroad Addition, subject to retention of a permanent utility easement in those portions of vacated South 15<sup>th</sup> and South 17<sup>th</sup> Streets.

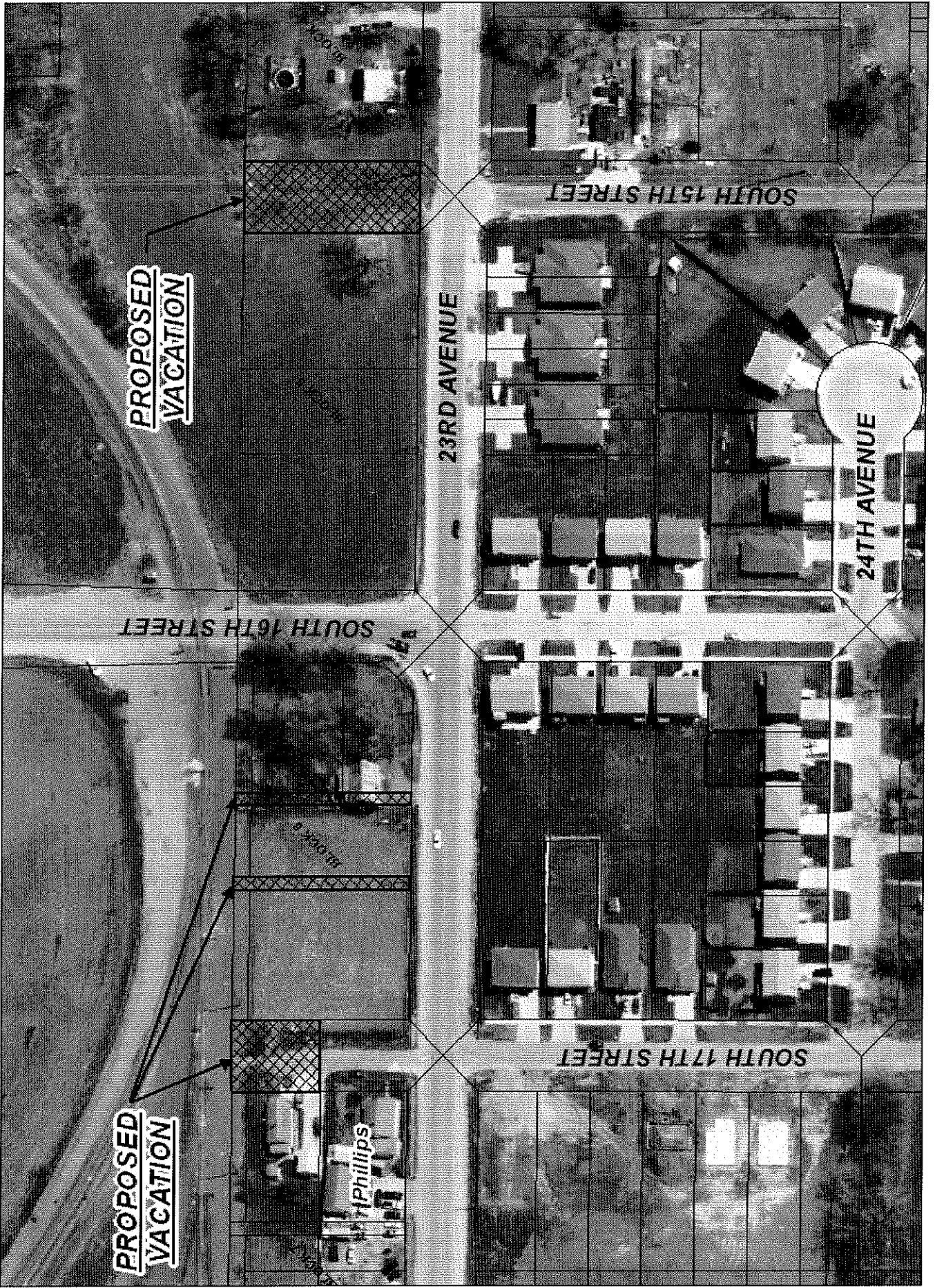
VOTE: Aye 10 Nay 0 Abstain 0 Absent 1 Motion Carried.

**Attachments**

**Attachments:** Map showing requested right-of-way vacation

**Prepared By:** Rebecca Sall, Planning Technician, Community Development Department







Prepared by: Community Development Dept., Co. Bluffs, IA 51503 – Phone: 328-4629  
Return to: City Clerk, 209 Pearl Street, Co. Bluffs, IA 51503 – Phone: 328-4616

RESOLUTION NO. 08-164

A RESOLUTION OF INTENT TO VACATE SOUTH 15<sup>TH</sup> STREET ABUTTING BLOCKS 4 AND 5, BOTH NORTH/SOUTH ALLEYS IN BLOCK 6 AND SOUTH 17<sup>TH</sup> STREET ABUTTING THE NORTH 82.5 FEET OF BLOCKS 6 AND 7, ALL IN RAILROAD ADDITION, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA.

WHEREAS, the Community Development Department of the City of Council Bluffs requests vacation of South 15<sup>th</sup> Street abutting Blocks 4 and 5, both north/south alleys in Block 6 and South 17<sup>th</sup> Street abutting the North 82.5 feet of Blocks 6 and 7, all in Railroad Addition and located north of 23<sup>rd</sup> Avenue and south of the Union Pacific Railroad yard; and

WHEREAS, this City Council hereby declares its intent to vacate this City right-of-way.

NOW, THEREFORE, BE IT RESOLVED  
BY THE CITY COUNCIL  
OF THE  
CITY OF COUNCIL BLUFFS, IOWA:

That this City Council hereby declares its intent to retain ownership of the above described City property;  
and

BE IT FURTHER RESOLVED

That a public hearing on the City's intent to vacate this right-of-way is hereby set for June 23, 2008.

ADOPTED  
AND  
APPROVED: June 9, 2008

\_\_\_\_\_  
Thomas P. Hanafan, Mayor

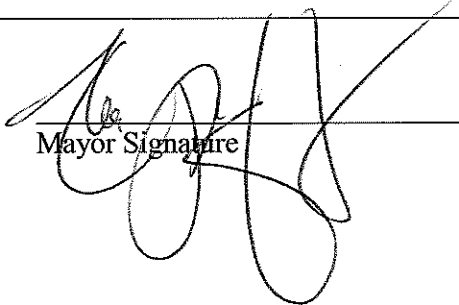
ATTEST: \_\_\_\_\_  
Judith H. Ridgeley, City Clerk

## Council Communication

Department: Legal	Ordinance No.	
Case/Project No.	Resolution No. <u>08-116</u>	Date: <u>June 9, 2008</u>
Applicant.		
<b>SUBJECT/TITLE</b>		
MidAmerican Energy is seeking two separate property interests from the City. The first is set out in a Fiber Optics Cable Easement Agreement and the second is entitled MidAmerican Energy Electric and Communications Easement.		
<b>BACKGROUND</b>		
<p>The reason for the Fiber Optic Cable Easement Agreement is to allow MEC the ability to grant third parties to have fiber optic lines on its poles. The language in this agreement is the same as the language in the agreement with the Council Bluffs Industrial Foundation regarding the routing of fiber optic lines for Google. It is limited to seven miles.</p> <p>The second document, MidAmerican Energy Electric and Communications Easement, addresses existing power lines that have been authorized to a certain extent by prior agreements, but this will address some changes in routing and use from what was initially approved.</p>		
<b>RECOMMENDATION</b>		
Approval of both resolutions is recommendation.		

Richard Wade

\_\_\_\_\_  
Department Head Signature

  
\_\_\_\_\_  
Mayor Signature

4 A

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PREPARED BY: City Legal Department, 209 Pearl Street, Council Bluffs, IA 51503  
RETURN TO: City Clerk, 209 Pearl Street, Council Bluffs, IA 51503

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RESOLUTION NO. 08-116

A RESOLUTION AUTHORIZING DISPOSAL OF CERTAIN CITY PROPERTY BY GRANTING A PERPETUAL FIBER OPTIC CABLE EASEMENT TO MIDAMERICAN ENERGY.

WHEREAS, on April 14, this Council approved Resolution No. 08-112 which expressed the City's intent to dispose of certain City property by granting to MidAmerican Energy Company a perpetual fiber optic cable easement; and

WHEREAS, a public hearing in this matter has been held.

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA

That the Mayor shall execute the Perpetual Fiber Optic Cable Easement Agreement granting MidAmerican Energy certain rights for the purpose of constructing, maintaining and repairing a fiber optic cable system and appurtenances within the City.

ADOPTED  
AND  
APPROVED June 9, 2008

\_\_\_\_\_  
Thomas P. Hanafan, Mayor

ATTEST: \_\_\_\_\_  
Judith Ridgeley, City Clerk

C.A. 4/28/08

**STATE: IOWA**  
**COUNTY: POTTAWATTAMIE**  
**CITY OF: COUNCIL BLUFFS**  
**SECTION: 23, 14, and 11**  
**TOWNSHIP: 74 NORTH**  
**RANGE: 44 WEST**  
**TYPE: ELECTRIC TRANSMISSION, DISTRIBUTION AND COMMUNICATIONS**

**MidAmerican Energy  
Company  
Electric and Communications Easement**

Prepared by and return to: David A. Lane-MidAmerican Energy Company-401 Douglas Street-PO Box 778, Sioux City, Iowa 51102, Phone: 712-277-7574-FAX-712-252-7373, Email: dalane@midamerican.com.
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The undersigned owner(s), **CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA, an Iowa municipal corporation**, in consideration of \$1.00, and other valuable consideration, the receipt of which is hereby acknowledged, hereby grant(s) to MidAmerican Energy Company, an Iowa corporation, its successors and assigns, a perpetual right-of-way easement in, upon, over, across and along the land hereinafter specifically described, for the purposes of constructing, reconstructing, operating, maintaining and removing electric transmission, distribution and communications lines to be located on said premises, including the necessary poles, towers, wires, guys, guy stubs, anchors and other appurtenances and communication facilities for the transmission and distribution of electric energy and for communication and electrical controls, together with the right to assign or sell, in whole or in part, to any other party the right to use, either jointly with the Company or for its own purposes, any structures, wires, appurtenances and communications facilities placed pursuant to the terms hereof, such lines to form part of electric distribution, transmission, and communications systems, and the right of ingress and egress and the right to trim, cut down and remove such trees, brush, saplings and bushes as may interfere with the proper construction, maintenance, operation or removal of said lines, upon, over, along and across the real estate described as follows:

**THIS AREA INTENTIONALLY LEFT  
BLANK**

**Easement description:**

**See Exhibit "A" attached hereto and made a part hereof by reference.**

The grant of easement herein contained shall include the right to survey the property and the right of ingress and egress for the purposes stated herein.

Subject to the rights of the Company hereinunder, grantor(s) shall have the right to cultivate, use and occupy the land except that no structure or object, permanent or temporary, shall be erected on said strip of land and that no brush or other inflammable materials shall be deposited or accumulated or burned within said strip.

No building shall be constructed and/or changes shall be made in ground elevation by the grantor within the easement area without written permission from the Company indicating that said construction and/or ground elevation changes will not interfere with Company's rights to operate and maintain its facilities.

Damages to property, real or personal of the undersigned, their successors and assigns, by the Company while constructing or maintaining the lines shall be paid by the Company to the party damaged subject to the following special conditions:

**SPECIAL CONDITIONS:**

1. **Grantee agrees to hold Grantor harmless for, and defend Grantor against, any claims, losses, causes of action, and suits to the extent that the same are caused by the negligence of Grantee, its agents, employees or invitees in constructing, reconstructing, operating, maintaining or removing facilities on the easement granted hereby, and will indemnify Grantor for any losses suffered due to any such claims, losses, causes of action or suits.**
2. **This easement agreement cancels and supersedes a certain Easement granted by the City of Council Bluffs, Iowa dated September 15, 1954, filed and recorded in Book 1120 Page 217 in the Office of the Pottawattamie County Recorder.**

**THIS AREA INTENTIONALLY LEFT  
BLANK**

Signed, sealed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA

By: *Thomas P. Hansen*

Its: THOMAS HANSEN  
Printed or typed name of Mayor

ATTEST:

By: *Judith Ridgeley*

Its: Judith Ridgeley  
Printed or typed name and of City Clerk

STATE OF IOWA

)

) Ss.

COUNTY OF POTTAWATTAMIE

)

This instrument was acknowledged before me on

\_\_\_\_\_, 20\_\_\_\_ by Thomas P. Hansen and  
Judith H. Ridgeley as mayor and city clerk respectively of the city of Council  
Bluffs, Pottawattamie County, Iowa.



(SEAL)

*Marcia L. Worden*  
Notary Public

Signed, sealed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

MidAmerican Energy Company

By: \_\_\_\_\_  
James Averweg, Vice President, Engineering

STATE OF IOWA

)

) Ss.

COUNTY OF SCOTT

)

This instrument was acknowledged before me on \_\_\_\_\_ 20\_\_\_\_ by James Averweg,  
Vice President, Engineering of MidAmerican Energy Company.

Notary Public


( S E A L )

## Council Communication

Department: Legal	Ordinance No.	
Case/Project No.	Resolution No. <u>08-117</u>	Date: <u>June 9, 2008</u>
Applicant.		
<b>SUBJECT/TITLE</b>		
MidAmerican Energy is seeking two separate property interests from the City. The first is set out in a Fiber Optics Cable Easement Agreement and the second is entitled MidAmerican Energy Electric and Communications Easement.		
<b>BACKGROUND</b>		
<p>The reason for the Fiber Optic Cable Easement Agreement is to allow MEC the ability to grant third parties to have fiber optic lines on its poles. The language in this agreement is the same as the language in the agreement with the Council Bluffs Industrial Foundation regarding the routing of fiber optic lines for Google. It is limited to seven miles.</p> <p>The second document, MidAmerican Energy Electric and Communications Easement, addresses existing power lines that have been authorized to a certain extent by prior agreements, but this will address some changes in routing and use from what was initially approved.</p>		
<b>RECOMMENDATION</b>		
Approval of both resolutions is recommendation.		

Richard Wade

\_\_\_\_\_  
Department Head Signature

  
\_\_\_\_\_  
Mayor Signature



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PREPARED BY: City Legal Department, 209 Pearl Street, Council Bluffs, IA 51503  
RETURN TO: City Clerk, 209 Pearl Street, Council Bluffs, IA 51503

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RESOLUTION NO. 08-117

A RESOLUTION AUTHORIZING DISPOSAL OF CERTAIN CITY PROPERTY BY GRANTING A PERPETUAL ELECTRIC AND COMMUNICATIONS EASEMENT TO MIDAMERICAN ENERGY.

WHEREAS, on April 14, this Council approved Resolution No. 08-113 which expressed the City's intent to dispose of certain City property by granting a perpetual electric and communications easement to MidAmerican Energy Company; and

WHEREAS, a public hearing in this matter has been held.

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA

BE IT FURTHER RESOLVED

That the Mayor shall execute the Perpetual Electric and Communications Easement granting MidAmerican Energy certain rights for the purposes of constructing, reconstructing, operating, maintaining and removing electric transmission, distribution and communications lines including the necessary appurtenances.

ADOPTED  
AND  
APPROVED June 9, 2008

\_\_\_\_\_  
Thomas P. Hanafan, Mayor

ATTEST: \_\_\_\_\_

Judith Ridgeley, City Clerk

STATE: IOWA  
COUNTY: POTTAWATTAMIE  
CITY: COUNCIL BLUFFS  
SECTION: 7, 11, 12 74N 43 W  
18, 19, 30 74 N 44 W  
TOWNSHIP: 74 North  
RANGE: 43 and 44 W  
TYPE: FIBER OPTIC EASEMENT AGREEMENT

Return to: David A. Lane-MidAmerican Energy Company-401 Douglas Street-PO Box 778, Sioux City, Iowa 51102, Phone: 712-277-7574-FAX-712-252-7373, Email: dalane@midamerican.com.

### **FIBER OPTIC CABLE EASEMENT AGREEMENT**

This Fiber Optic Cable Easement Agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between the City of Council Bluffs, an Iowa municipal corporation ("City") and MidAmerican Energy Company, an Iowa corporation, as well as its successors in interest and assigns ("Grantee").

#### **RECITALS:**

- A. Grantee wishes to acquire easements within City streets and right of way for the purpose of constructing, maintaining and repairing a fiber optic cable system and appurtenances to serve a private facility within the City.
- B. City is willing to grant an easement within its streets and right of way as requested by Grantee, subject to certain terms, conditions, and limitations and the parties wish to set forth their agreement concerning the easement.

**NOW, THEREFORE**, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, City and Grantee agree as follows:

#### **1. GRANT OF PERPETUAL EASEMENT.**

Subject to limitations and conditions set forth below, City hereby grants and conveys to Grantee, including all successors in interest and assigns, a perpetual right-of-way easement in, upon, over, under, across and along City right of way, streets and alleys within the corporate limits of the City existing as of the date of this Agreement or as the corporate limits may be modified in the future as a result of annexation of land to the City

("Easement Area"). The purpose of the easement granted in this Agreement is to permit the construction, reconstruction, maintenance, repair and operation of a fiber optic cable system and appurtenances, including, but not limited to, conduits, wires, cables, converters, splice boxes, handholes, manholes, vaults, equipment and surface location markers ("System") together with the right of reasonable ingress and egress to and from the Easement Area by Grantee and its employees, agents, engineers and contractors over adjacent land owned by the City. The System shall provide for high speed network connectivity for Grantee's existing and future facilities in the City, including fiber optic connectivity between Grantee's facilities and connectivity from Grantee's facilities to fiber optic lines owned by other parties. The actual location of the System within City right-of-way, streets and alleys shall be subject to the prior written approval of the City's Director of Public Works (which approval shall not be unreasonably denied or delayed) at the time Grantee obtains a permit from the City to allow construction of the System as described below in paragraph 3 for a distance of up to seven (7) miles within the City right of way, streets and alleys; provided, however, the City's Director of Public Works is authorized to expand the seven (7) mile limitation upon a demonstration by Grantee that a greater distance is reasonably required in order to serve Grantee's needs as described in this Agreement. See Exhibits "A" and "B" attached hereto and made a part hereof by reference.

**2. EASEMENT RUNS WITH LAND.**

The easement described in this Agreement shall be perpetual and shall run with the land described in this Agreement.

**3. CITY PERMITS.**

The use of the Easement Area is subject to Grantee obtaining all requisite permits required by City ordinances in connection with the construction and maintenance of the System, including any excavation within the Easement Area.

**4. MANNER OF INSTALLATION.**

Grantee shall install and maintain the System in a manner which will not injure, damage or interfere with water mains and pipes, sanitary and storm sewers, or any other City improvements or utilities existing in the streets, avenues, right-of-way, alleys, bridges, places or property of the City. Furthermore, the installation and maintenance of the System shall conform to the grade established by the City for any street, avenues, alleys or City property. In addition, the construction, installation and maintenance of the System shall not endanger personnel or property or unreasonably obstruct travel or access on any City street, avenue, alley, bridge, right-of-way or City property.

**5. ASSIGNMENT.**

This Agreement may be assigned by Grantee at any time without the consent of the City; however, in the event of an assignment, the Grantee shall furnish written notice to the

City within thirty (30) days following the effective date of the assignment together with the following:

- (i) the name, telephone number, and address of the assignee;
- (ii) the written agreement by the assignee to assume all obligations of Grantee under this Agreement; and
- (iii) a confirmation that insurance coverage is in force and effect regarding the assignee as required by this Agreement.

**6. HOLD HARMLESS.**

Grantee at all times shall defend, indemnify, protect and hold harmless the City from and against any and all liability, losses, and damage to property or bodily injury or death to any person which may arise out of or be caused by the construction, replacement, maintenance, or operation of Grantee's System caused by an act or failure to act on the part of the Grantee, its agents, officers, employees, or contractors. Grantee shall also pay all reasonable attorney fees incurred by the City in defending itself with regard to all damages, penalties or other claims resulting from the acts or omissions of Grantee, its agents, officers, employees or contractors.

**7. INSURANCE.**

Promptly after the execution of this Agreement by the parties, and no later than the date when construction of the System commences within the Easement Area, and annually thereafter if required by the City, Grantee shall provide a Certificate of Insurance to the City confirming that it has public liability insurance in full force and effect for personal injuries and death arising out of any accident, occurrence, and events in the following minimum amounts: \$1,000,000 for any one person; \$1,000,000 as to any one occurrence for injury or death to persons; \$1,000,000 for damages to property; and so-called umbrella insurance coverage in the amount of \$5,000,000. All insurance policies shall name the City as an additional insured party at no expense to the City. In addition, the City shall receive at least thirty (30) days prior written notice of any cancellation or material change of the insurance policies. In addition to the above-described minimum amounts of insurance coverage, the City shall have the right, upon receiving a recommendation from its independent insurance consultant, to require a reasonable increase in the minimum amount of insurance coverage which shall not be greater than that which is imposed on other similar fiber optic cable systems in the City. In lieu of a Certificate of Insurance, Grantee may provide proof of self-insurance.

**8. RELOCATION.**

Grantee acknowledges that the City has a duty to the public to maintain, repair, or improve City streets, avenues, alleys, bridges, right-of-way, sanitary and storm sewer lines, and other City infrastructure which could potentially impact Grantee's System ("City Improvement"). The City shall make reasonable efforts to avoid impacting

Grantee's System with any such City Improvement; however, relocation of a portion of the System may be required by the City for the following reasons and subject to the following conditions:

- (i) Anticipated Conflicts. If the City during the planning or engineering phases of a City Improvement anticipates that construction of the City Improvement will necessitate the relocation of a portion of the System, the City shall furnish Grantee at least a ninety (90) day written notice of the need to relocate a portion of the System ("Anticipated Conflict"). Subject to delays caused by Force Majeure, Grantee shall relocate the portion of the System as required by the City because of the Anticipated Conflict within said ninety (90) day period of time.
- (ii) Unanticipated Conflicts. If the City during the construction phase of a City Improvement discovers circumstances in the field which unexpectedly would necessitate the relocation of a portion of the System, the City shall furnish Grantee with a written notice of the need to relocate a portion of the System ("Unanticipated Conflict"). Subject to delays caused by Force Majeure, Grantee shall expeditiously and in a timely and commercially reasonable fashion relocate the portion of the System as required by the City due to the Unanticipated Conflict and take all commercially reasonable steps to minimize the delay of or disruption to the construction of the City Improvement caused by the required relocation.
- (iii) Emergencies. If the City at any time is confronted with unforeseen circumstances or conditions which call for immediate action in order to protect the health, safety or welfare of the public ("Emergency"), the City shall notify Grantee of the need to relocate a portion of the System immediately or as soon as possible and Grantee shall make commercially reasonable efforts to comply with the City's request. If grantee is unable to respond in time to prevent a substantial adverse impact on the health, safety or welfare of the public, the City shall have a right to relocate a portion of the System itself.
- (iv) Conditions. Any relocation as required or permitted in this paragraph 8 shall be subject to the following conditions:
  - (a) the relocation requirement or action taken by the City shall not result in an interruption of services provided by the System;
  - (b) the relocation shall be at the Grantee's sole expense; and
  - (c) the City shall reasonably cooperate with Grantee and its engineers, consultants, employees and contractors during the relocation process.

## 9. EXCAVATION BY GRANTEE.

In the construction, reconstruction, repair and maintenance of the System, any excavation within the Easement Area shall be pursuant to the requisite City permit requirements established by ordinance and in addition the following requirements shall be met by Grantee:

- (i) all excavations shall be properly guarded and barricaded;
- (ii) any payment disturbed or destroyed shall be promptly repaired or replaced by Grantee under the supervision of the Director of Public Works of the City;
- (iii) any sod or landscaping damaged or destroyed by Grantee shall be restored to a condition similar to that which existed before the excavation as nearly as practicable;
- (iv) the excavation shall not unnecessarily obstruct the use of the City streets, avenues, alleys, right-of-way or City property; and
- (v) if Grantee fails to meet any requirements of this paragraph 9, the City shall have the right to take reasonable corrective or remedial action and Grantee agrees to promptly reimburse the City for its costs.

## 10. NOTICES.

Any notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been given:

- (i) the second business day after deposit in the United States mail, registered or certified mail, postage prepaid, return receipt requested, and addressed to the recipient party at its address below; or
- (ii) on the date of scheduled delivery when deposited with a nationally recognized overnight courier service such as Federal Express, UPS or Airborne, for next day delivery; or
- (iii) upon acknowledgement by the addressee of its receipt of e-mail to addressee's computer; or upon successful delivery in person to the Director of Public Works of the City or by successful delivery by facsimile to the addresses shown below. Either party may, by notice as herein provided, designate a different address to which notice shall be sent. The parties' initial addresses for notices are as follows:

TO CITY: City of Council Bluffs  
City Hall  
209 Pearl Street  
Council Bluffs, IA 51503  
Attention: City Clerk

FAX: 712-328-2137

E-MAIL: [www.clerk.councilbluffs-ia.gov](http://www.clerk.councilbluffs-ia.gov)

TO GRANTEE: MidAmerican Energy Company  
666 Grand Avenue  
P.O. Box 657  
Des Moines, IA 50306  
Attention: Telecommunications Manager

FAX: 515-252-6550  
E-MAIL: [rlsly@midamerican.com](mailto:rlsly@midamerican.com)

**11. ANNUAL FEE.**

In further consideration for the easement granted in this Agreement, Grantee shall pay to the City the sum of Two Hundred Dollars (\$200.00) each year during the term of this Agreement; provided, however, this annual fee may be increased in the future by the City but not in excess of any annual license fee paid by any comparable fiber optic cable owner, company or facility utilizing the City right-of-way, streets or alleys. For purposes of this Agreement, a comparable fiber optic cable owner, company or facility is one that is utilizing two or fewer miles of City right-of-way, streets or alleys.

**12. MISCELLANEOUS.**

- (a) This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa.
- (b) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors in interest and assigns.
- (c) The captions and headings in this Agreement are for convenience and reference only and the words contained therein shall in no way be held to define or add to the interpretation, construction or meaning of any provision of this Agreement.
- (d) If any part, term or provision of the Agreement be declared by a court of competent jurisdiction to be invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.
- (e) If either party brings any action, suit, or proceeding against the other arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees incurred thereby.
- (f) The uses of the easement granted in this Agreement shall not be expanded to other or different uses. Furthermore, no other person, entity, or company shall share the Easement Area with Grantee and Grantee shall be the sole recipient and beneficiary of the easement granted in this Agreement. Notwithstanding

anything to the contrary in this subparagraph (f), however, other entities or utilities may utilize one or more of the conduits and associated manholes and handholes constructed by Grantee within the Easement Area if the entities or utilities have entered into a separate agreement with the City allowing such use and if Grantee has consented to such use.

- (g) The parties agree that each party and its legal counsel or advisor have reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement.
- (h) This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- (i) Notwithstanding anything to the contrary in this Agreement, Grantee shall have the right to terminate this Agreement and abandon the easement described herein at any time and without penalty, if it is not in default in making any annual payments to the City pursuant to paragraph 11 above, by giving at least ninety (90) days prior written notice to the City, after which Grantee shall have no further rights or duties under this Agreement except for the hold harmless requirements in the above paragraph 6 covering the period of time prior to the effective date of termination of this Agreement and which shall survive termination as to such period of time. After the effective date of termination of this Agreement by Grantee, it shall also file a Notice of Termination with the Recorder of Pottawatomie County, Iowa.

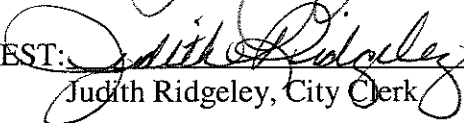
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

**THIS AREA INTENTIONALLY LEFT BLANK**



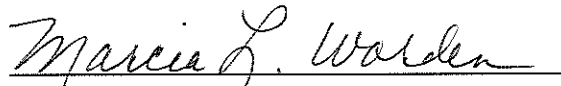
CITY OF COUNCIL BLUFFS, IOWA

By:   
Thomas P. Hanafan, Mayor

ATTEST:   
Judith Ridgeley, City Clerk

STATE OF IOWA )  
 ) Ss  
COUNTY OF POTTAWATTAMIE )

The above Agreement was acknowledged before me, a Notary Public in and for the State of Iowa, on the \_\_\_\_ day of April 2008, by Thomas D. Hanafan who is the Mayor of the City of Council Bluffs, Iowa and who acknowledged that said Agreement was duly authorized by resolution of the City Council of Council Bluffs, Iowa and by Judith Ridgeley who is the City Clerk of Council Bluffs Iowa and who attested to the Mayor's signature and who also acknowledged that said Agreement was duly authorized by resolution of the City Council of Council Bluffs, Iowa.

  
Notary Public



(SEAL)

By: \_\_\_\_\_  
Title \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ by  
\_\_\_\_\_ on \_\_\_\_\_ 2008 as  
\_\_\_\_\_ of MidAmerican Energy Company.

Notary Public

This instrument was acknowledged before me on \_\_\_\_\_, 2008 by Paul J. Leighton Vice President and Corporate Secretary of MidAmerican Energy Company.

Notary Public

( S E A L )

PREPARED BY: City Legal Department, 209 Pearl Street, Council Bluffs, IA 51503

RETURN TO: City Clerk, 209 Pearl Street, Council Bluffs, IA 51503

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RESOLUTION NO. 08-157

A RESOLUTION AUTHORIZING ACCEPTANCE OF TWO EASEMENTS SUBJECT TO THE CONSENT OF THE MIDAMERICAN ENERGY COMPANY (MEC) IN CONNECTION WITH THE ESTABLISHMENT OF A UTILITIES CORRIDOR.

WHEREAS, it is necessary for the City to obtain two easements from the Southwest Iowa Renewable Energy, LLC (SIRE) and general descriptions of these easements are listed below:

a strip of land 25 feet easement in width, being situated in the north half of the Northeast Quarter in Section 31, Township 74 North, Range 43 West of the 5<sup>th</sup> Principal Meridian, Pottawattamie County, Iowa, and more fully described in an exhibit attached hereto; and

a strip of land 50 feet in width being situated in the north half of the Northeast Quarter in Section 31, Township 74 North, Range 43 West of the 5<sup>th</sup> Principal Meridian, Pottawattamie County, Iowa, and more fully described in an exhibit attached hereto.

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA

That the City does hereby accept the easements from SIRE under the terms and conditions negotiated.

ADOPTED  
AND  
APPROVED June 9, 2008

\_\_\_\_\_  
Thomas P. Hanafan, Mayor

ATTEST: \_\_\_\_\_  
Judith H. Ridgeley, City Clerk

C.A.5/12/08

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PREPARED BY: City Of Council Bluffs Legal Dept., 209 Pearl Street, Council Bluffs, IA 51503 328-4620  
RETURN TO: Legal Department, 209 Pearl Street, Council Bluffs, IA 51503

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City of Council Bluffs Project No. FY \_\_\_\_\_

### **EASEMENT FOR PUBLIC AND PRIVATE UTILITIES RIGHT OF WAY**

#### ***KNOW ALL PERSONS BY THESE PRESENTS:***

That Southwest Iowa Renewable Energy, LLC (hereinafter called "Grantor"), for good and valuable consideration, the receipt and sufficiency of which are acknowledged, does hereby convey unto the City of Council Bluffs, Iowa, a municipal corporation, and its assigns, (hereinafter called the "City"), a perpetual public and private utilities easement (hereinafter called the "Easement") over, under, through, and across the below-described real estate.

A strip of land 50 feet in width being situated in the north half of the Northeast Quarter in Section 31, Township 74 North, Range 43 West of the 5<sup>th</sup> Principal Meridian, Pottawattamie County, Iowa, and being more fully described in Exhibit "A", attached hereto and hereinafter called the "Easement Area".

This Easement shall be subject to the following terms and conditions:

1. **USE OF EASEMENT AREA:** Grantor and City understand and agree that the Easement Area described herein creates an area for the purposes of constructing, reconstructing, operating, maintaining and removing public and private utilities and lines ("Utilities Corridor"). The Utilities Corridor shall be subject to the Permitted Facilities (defined below). City understands that its rights under this Easement are non-exclusive and that Grantor makes no warranty of title as to the Easement Area.

2. **COLOCATION:** In addition to the public uses of the Utilities Corridor within the Easement Area by the City as described in this Easement, Grantor and City agree that the City shall have the absolute right, at its reasonable discretion, to designate or otherwise allow for and permit private sanitary sewer lines (including, but not limited to gray water lines and related appurtenances), private storm sewer lines, private electric lines, private water lines, private fiber optic lines and cables and other private utility or private service lines, poles, lines, private fiber optic lines and cables and other private utility or private service lines, poles, equipment and appurtenances within the Easement Area (the "Colocated Utilities") and to allow those Colocated Utilities to enjoy all of the rights and privileges of the Easement granted herein, and be subject to all applicable terms and conditions of this Easement, without the necessity of any approval or consent of Grantor or its successors in interest of assigns at all times subject to the Permitted Facilities. If requested by an owner of Colocated Utilities, the City shall have the right to further confirm the rights and privileges granted in this paragraph regarding the Utilities Corridor by granting a written sub-easement from the City to the owner of the Colocated Utilities which shall be subject to the Permitted Facilities. If a sub-easement is requested of the City by any owner of the Colocated Utilities, it shall be consistent with the terms and conditions of this paragraph, as well as other applicable terms and conditions of this

## EASEMENT FOR PUBLIC AND PRIVATE UTILITIES RIGHT OF WAY

Easement, and shall be filed by the owner of the Colocated Utilities with the Recorder of Pottawattamie County, Iowa, and thereafter shall be deemed to run with the land perpetually.

3. **TEMPORARY CONSTRUCTION EASEMENT:** In addition, the owners, agents, employees, and contractors of the City or the Colocated Utilities shall automatically have a temporary construction easement during the three years following the execution of this document, without the need for further grant of authority, for a period not to exceed eighteen (18) months for each installation of facilities in the Utilities Corridor over a reasonable area of Grantor's land adjoining the Easement Area as depicted in the Attachment A in order to gain access for construction and to install the utilities within the Utilities Corridor; provided, however, that if the use of the temporary construction easement disturbs Grantor's adjoining land, the City or the owner of the Colocated Utilities, as the case may be, shall be responsible to restore the disturbed area within thirty (30) days following completion of construction to a condition reasonably comparable to that which existed prior to construction and to also compensate Grantor in a reasonable fashion for damage to crops, if any, as well as damage to trees, shrubs, or landscaping which cannot be restored, which payment shall be made not later than thirty (30) days after the date of damage. The three year term of this temporary construction easement may be extended by a period of up to 18 months so long as an installation of facilities within this corridor was commenced within the initial three year term.

4. **ERECTION OF STRUCTURES PROHIBITED:** Grantor shall not erect any improvement or structure over or within the Easement Area without obtaining the prior written consent of the City Engineer.

5. **CHANGE OF GRADE PROHIBITED:** Except for the Permitted Facilities, Grantor shall not change the grade, elevation, or contour of any part of the Easement Area without obtaining the prior written consent of the City Engineer which consent shall not be unreasonably withheld or delayed.

6. **RIGHT OF ACCESS:** City and all entities utilizing the Easement pursuant to paragraph 1 above shall have the right of access to the Easement Area and have all rights of ingress and egress reasonably necessary for the use and enjoyment of the Easement Area as herein described.

7. **REMOVAL AND REPLACEMENT:** The cost of removal and replacement of any unauthorized improvement or structures within the Easement Area other than surface parking or private drive, necessitated by the exercise of the rights under this Easement, shall be borne by the Grantor or their successors or assigns.

8. **SURFACE RESTORATION:** The liability to restore the surface within the Easement Area, other than surface parking or private drive, as well as any area disturbed by virtue of the temporary construction easement described above in paragraph 1, shall be limited only to grading and seeding or restoring of Permitted Facilities if damaged by the City or authorized entity utilizing the Easement pursuant to paragraph 1 above, as the case may be.

9. **PERMITTED FACILITIES:** The easement area is currently crossed by roadways, tracks and other facilities of Grantor and third parties including without limitation MidAmerican Energy Company and may be crossed in the future by additional facilities of Grantor or such third parties which are not inconsistent with City's rights under this Easement (collectively, "Permitted Facilities").

10. **DUTY TO REPAIR:** Any drain tile, drive or access way, fence, yard or other improvements outside of or Permitted Facilities within the Easement Area which may be damaged as a result of any entry made through an exercise of the City's right of access or its rights under this Easement shall be repaired at no expense to Grantor by the City or the entity utilizing the Easement pursuant to paragraph 1 above, as the case may be.

11. **EASEMENT RUNS WITH LAND:** This easement shall be deemed to run with the land and shall be binding on Grantor and on Grantor's successors and assigns.

12. This easement and transfer is exempt from transfer tax Iowa Code Sec. 428 A.1.

EASEMENT FOR PUBLIC AND PRIVATE UTILITIES RIGHT OF WAY

13. This easement is being acquired for public purposes and a Declaration of Value is not required. Iowa Code Sec. 428 A.1.

Grantor does HEREBY COVENANT with the City that Grantor has good and lawful authority to convey this Easement.

The undersigned hereby relinquishes all rights of dower, homestead, and distributive share, if any, in and to the interests conveyed by the Easement.

Words and phrases herein, including acknowledgement hereof, shall be constructed as in the singular or plural number and as masculine or feminine gender, according to context.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

By: \_\_\_\_\_

STATE OF IOWA )  
 ) ss.  
COUNTY OF POTTAWATTAMIE )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me the undersigned, a Notary Public in and for said County and said State, personally appeared \_\_\_\_\_, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

\_\_\_\_\_  
Notary Public in & for the State of Iowa

CONSENT BY MORTGAGEE

The undersigned Mortgagee holding a mortgage lien on the real estate described in Attachment "A" to this Easement dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and filed on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the records of the Recorder of Pottawattamie County, Iowa, (the "Mortgage") hereby consents to the Easement granted herein by Grantor and covenants and agrees that any enforcement action taken by the Mortgagee under the Mortgage, including, but not limited to, foreclosure or granting a deed in lieu of foreclosure, shall in no way terminate, abrogate, or affect the Easement granted by Grantor and said Easement, and all rights, privileges, and duties under the Easement, shall thereafter remain in full force and effect.

MORTGAGEE:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EASEMENT FOR PUBLIC AND PRIVATE UTILITIES RIGHT OF WAY

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_, SS

On the \_\_\_\_\_ day of \_\_\_\_\_, 2008, before the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ who is the \_\_\_\_\_ of \_\_\_\_\_, and who executed the foregoing Consent by Mortgagee.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



LEGAL DESCRIPTION - TRACT 1

A PARCEL OF LAND BEING A PORTION OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 74 NORTH, RANGE 43 WEST OF THE 5th PRINCIPAL MERIDIAN, POTTAWATTAMIE COUNTY, IOWA, BEING MORE FULLY DESCRIBED AS FOLLOWS.

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 31;

THENCE ALONG THE WEST LINE OF SAID NORTH HALF OF THE NORTHEAST QUARTER, SOUTH 00 DEGREES 45 MINUTES 14 SECONDS WEST, 85.02 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 88 DEGREES 17 MINUTES 18 SECONDS EAST, 2270.95 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF INTERSTATE 29;

THENCE ALONG SAID WEST RIGHT-OF-WAY LINE, SOUTH 00 DEGREES 45 MINUTES 10 SECONDS WEST, 50.01 FEET;

THENCE NORTH 88 DEGREES 17 MINUTES 16 SECONDS WEST, 2220.97 FEET TO A POINT ON SAID WEST LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER;

THENCE ALONG SAID WEST LINE, NORTH 00 DEGREES 46 MINUTES 14 SECONDS EAST, 50.01 FEET TO THE TRUE POINT OF BEGINNING.

SAID PARCEL CONTAINS AN AREA OF 2.950 ACRES, MORE OR LESS

LEGAL DESCRIPTION -- TRACT 2

A PARCEL OF LAND BEING A PORTION OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 74 NORTH, RANGE 43 WEST OF THE 5th PRINCIPAL MERIDIAN, POTTAWATTAMIE COUNTY, IOWA, BEING MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 3;

THENCE ALONG THE WEST LINE OF SAID NORTH HALF OF THE NORTHEAST QUARTER, SOUTH 00 DEGREES 46 MINUTES 14 SECONDS WEST, 75.02 FEET TO THE TRUE POINT OF BEGINNING;

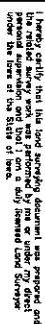
THENCE CONTINUING SOUTH ALONG SAID WEST LINE, SOUTH 00 DEGREES 46 MINUTES 14 SECONDS WEST,

THENCE SOUTH 88 DEGREES 17 MINUTES 16 SECONDS EAST, 2270.95 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF INTERSTATE 29;

THENCE ALONG SAID WEST RIGHT-OF-WAY LINE, NORTH 00 DEGREES 45 MINUTES 10 SECONDS EAST, 10.00 FEET;

THENCE NORTH 88 DEGREES 17 MINUTES 16 SECONDS WEST, 2220.95 FEET TO THE TRUE POINT OF BEGINNING.

SAID PARCEL CONTAINS AN AREA OF 0.521 ACRE, MORE OR LESS



MELVIN C. SAMPLES

License Number 10569  
My license expires on September 24 2008

**Pages or sheets covered by this seal**

**SHEET 1 OF 1**

project no.  
11836S  
street  
1 OF 1

project **CBIS**  
N1/2 NE1/4 SEC.31-74-43

client **DLB ASSOCIATES**  
OCEAN, NJ 07712

sheet **S.I.R.E - 50ft EASEMENT**

DEF  
drawn  
BJR  
designed  
TJS  
approved  
APR '08



**hgm**  
ASSOCIATES INC.  
ENGINEERING ARCHITECTURE SURVEYING  
council bluffs omaha



PREPARED BY: City Of Council Bluffs Legal Dept., 209 Pearl Street, Council Bluffs, IA 51503 328-4620  
RETURN TO: Legal Department, 209 Pearl Street, Council Bluffs, IA 51503

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CONSENT AGREEMENT BY MIDAMERICAN ENERGY COMPANY

MidAmerican Energy Company (MEC) does hereby consent to the granting of the attached easements by Southwest Iowa Renewable Energy, LLC. (SIRE) to the City of Council Bluffs and its assigns to the extent that they encroach upon a 100 foot Easement currently possessed by MEC. Easement #1 affects the northerly 25 feet and the easterly 25 feet of MEC's Easement and Easement #2 affect the southerly 25 feet of MEC's Easement. This Consent is conditioned upon the following terms and conditions:

TERMS AND CONDITIONS

1. All private fiber optic line shall be installed outside the existing MEC Easement Area created by an Easement filed in Book 2007, Page 005140 of the Pottawattamie County Records on SIRE lands.
2. All utility construction and maintenance must bore under and not disrupt public and private roads and drives whether now or in the future existing including but not limited to the substation access drive which exists pursuant to an Easement filed in Book 2008, Page 003991 of the Pottawattamie County Records and a Mutual Ingress/Egress Easement being created and not yet filed of Record on the City's Wastewater Treatment Plant Property.
3. All construction and maintenance must observe the rights of existing and future MEC facilities.
4. City and any private parties utilizing Easement #1 or Easement #2 acknowledges the presence of existing and future energized electric lines over and within the Easement Areas and that these electric lines are energized and accidental contact with these electric lines can cause serious injury or even death. City and any party utilizing Easement #1 or Easement #2 will ensure that any and all persons participating in construction, maintenance or similar activities within the vicinity of these electric lines are advised of the hazards of working around energized electric lines, including maintaining proper safety clearances from these energized electric lines.
5. Any use of the area described in Easement #1 and/or Easement #2 will be subordinate to MEC's rights to use the Easement Area by virtue of Easements filed in Book 2007, Page 005140 (Electric Easement on N 100' of SIRE land); 2008 – 003989 (SIRE Substation Transmission Easement); Book 2008, Page 003990 (SIRE Substation Distribution Easement); Book 2008; Page 003991 (SIRE Substation Transmission Easement); Book 2008, Page 003992 (Substation Ingress/Egress Easement); and Book 2007, Page 005107 (Conveyor Easement) all in the Pottawattamie County Records.. MEC will not require the relocation of installations by the City or other entities lawfully installed within the Easement Area so long as installations are made in observation of the restrictions set forth herein. Access by the City may be somewhat impeded with the addition of one or more new overhead lines. Excavations shall be limited to the southerly 15 feet of this intrusion into MEC's Easement, and the northerly 10 feet shall be utilized for access only.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

MEC

MIDAMERICAN ENERGY COMPANY, an Iowa Corporation

By: \_\_\_\_\_  
William J. Fehrman, President

By: \_\_\_\_\_  
P.J. Leighton, Vice President & Secretary

State of IOWA  
County of POLK

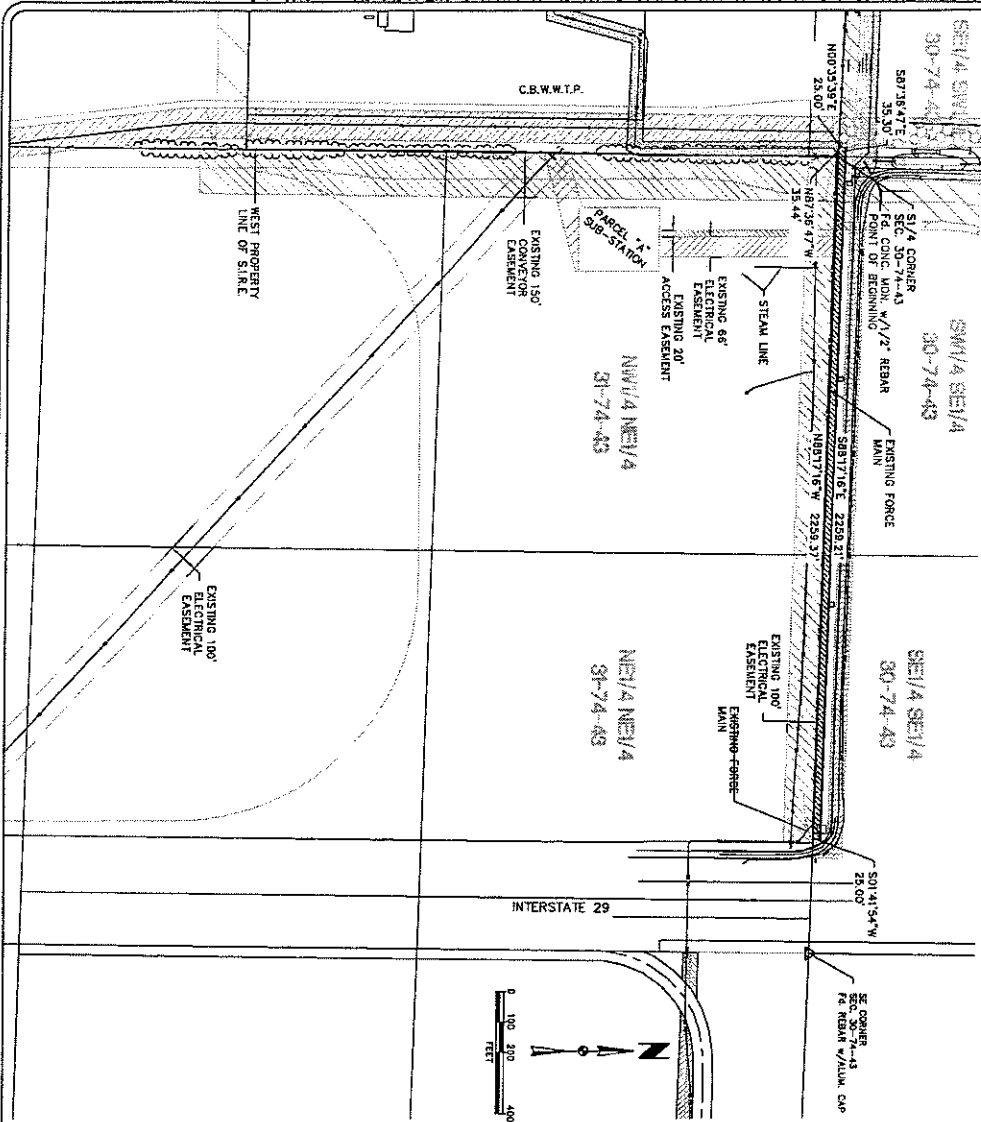
This instrument was acknowledged before me on \_\_\_\_\_, 2008 by William J. Fehrman as President of MidAmerican Energy Company.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

State of IOWA  
County of POLK

This instrument was acknowledged before me on \_\_\_\_\_, 2008 by P.J. Leighton as Vice President and Secretary of MidAmerican Energy Company.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

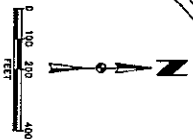


PREPARED BY: MELVIN G. SAMPLES, P.L.S., HGM ASSOCIATES, INC., P.O. BOX 919, COUNCIL BLUFFS, IOWA 51502 (712)323-0530.

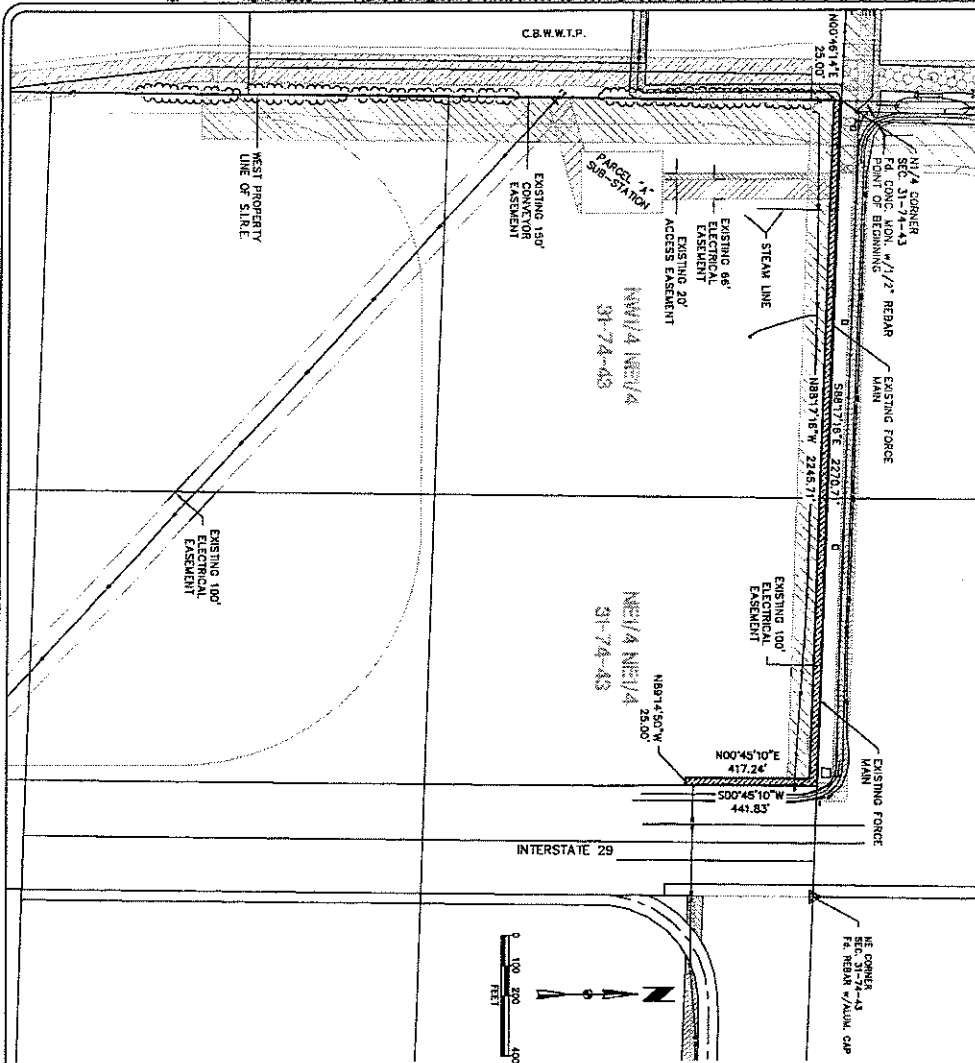
# EXHIBIT

## LEGAL DESCRIPTION

A STRIP OF LAND, 25.00 FEET IN WIDTH, BEING SITUATE IN THE SOUTH HALF OF SECTION 30, TOWNSHIP 74 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN, POLK COUNTY, IOWA, BEING MORE FULLY DESCRIBED AS FOLLOWS:  
BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 30;  
THENCE ALONG THE SOUTH LINE OF SAID SECTION 30, NORTH 87 DEGREES 36 MINUTES 47 SECONDS WEST, 35.44 FEET;  
THENCE NORTH 00 DEGREES 35 MINUTES 39 SECONDS EAST, 25.00 FEET;  
THENCE SOUTH 87 DEGREES 36 MINUTES 47 SECONDS EAST, 35.44 FEET;  
THENCE SOUTH 88 DEGREES 17 MINUTES 16 SECONDS EAST, 2259.21 FEET TO A POINT ON A WEST LINE OF AN EXISTING WATER MAIN EASEMENT RECORDED IN BOOK 102, PAGE 14196;  
THENCE ALONG SAID WEST LINE, SOUTH 01 DEGREE 41 MINUTES 54 SECONDS WEST, 25.00 FEET TO A POINT ON SAID SOUTH LINE;  
THENCE ALONG SAID SOUTH LINE, NORTH 88 DEGREES 17 MINUTES 16 SECONDS WEST, 2259.37 FEET TO THE POINT OF BEGINNING.  
SAID STRIP CONTAINS AN AREA OF 1.317 ACRES, MORE OR LESS.



I, MELVIN G. SAMPLES, being duly sworn, depose and say that the foregoing plat was prepared and the related survey work was performed by me or under my direct supervision, and that I am a duly licensed Land Surveyor under the laws of the State of Iowa.  
Subscribed and sworn to before me on this 1st day of December, 2008.  
Melvin G. Samples  
DATE: 12/01/08  
SHEET 1 OF 1



PREPARED BY: MELVIN G. SAMPLES, P.L.S., HGM ASSOCIATES, INC., P.O. BOX 919, CONICAL BLUFFS, IOWA 51502 (712)323-0930.

# EXHIBIT

**LEGAL DESCRIPTION**

A STRIP OF LAND, 25.00 FEET IN WIDTH, BEING SITUATE IN THE NORTH HALF OF THE NORTHEAST QUARTER IN SECTION 31, TOWNSHIP 74 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN, POTTAWATTAMIE COUNTY, IOWA, BEING MORE FULLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH QUARTER CORNER OF SAID SECTION 31;

THENCE ALONG THE NORTH LINE OF SAID NORTH HALF OF THE NORTHEAST QUARTER, SOUTH 88 DEGREES 17 MINUTES 16 SECONDS EAST, 2270.71 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF INTERSTATE 29;

THENCE ALONG SAID WEST RIGHT OF WAY LINE, SOUTH 00 DEGREES 45 MINUTES 10 SECONDS WEST, 441.83 FEET;

THENCE NORTH 89 DEGREES 14 MINUTES 50 SECONDS WEST, 25.00 FEET;

THENCE NORTH 00 DEGREES 45 MINUTES 10 SECONDS EAST, 417.24 FEET TO A POINT 25.00 FEET, NORMAL DISTANT SOUTH FROM SAID NORTH LINE;

THENCE PARALLEL WITH SAID NORTH LINE, NORTH 88 DEGREES 17 MINUTES 16 SECONDS WEST, 2245.71 FEET TO A POINT ON THE WEST LINE OF SAID NORTH HALF OF THE NORTHEAST QUARTER;

THENCE ALONG SAID WEST LINE, NORTH 00 DEGREES 45 MINUTES 14 SECONDS EAST, 25.00 FEET TO THE POINT OF BEGINNING.

SAID STRIP CONTAINS AN AREA OF 1.943 ACRES, MORE OR LESS.

	<b>MELVIN G. SAMPLES</b> License Number: 1068 My Professional Seal is Expiration 31, 2008. Figure or sheet covered by this seal: SHEET OF 1	DATE: _____
	I hereby certify that this land surveying document was prepared and the surveying was done in accordance with the laws and regulations of the State of Iowa, and that I am a duly licensed Iowa Surveyor under the laws of the State of Iowa.	

PREPARED BY: City Legal Department, 209 Pearl Street, Council Bluffs, IA 51503

RETURN TO: City Clerk, 209 Pearl Street, Council Bluffs, IA 51503

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RESOLUTION NO. 08-158

A RESOLUTION AUTHORIZING THE ACQUISITION OF AN EASEMENT FOR SANITARY SEWER RIGHT OF WAY FROM MIDAMERICAN ENERGY COMPANY (MEC).

WHEREAS, the City has a need to acquire an easement from MEC to assist in the creation of a utilities corridor and MEC has agreed to grant to the City an easement for said purpose; and

WHEREAS, the easement area is generally described as a strip of land 25 feet in width, being situated in the South Half of Section 30, Township 74 North, Range 43 West of the 5<sup>th</sup> Principal Meridian, Pottawattamie County, Iowa, and is more fully described in the exhibit attached hereto.

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA

That acceptance of a 25 feet wide easement for sanitary sewer right of way from MEC is hereby accepted under the terms and conditions set forth in the easement document.

ADOPTED  
AND  
APPROVED \_\_\_\_\_, 2008

\_\_\_\_\_  
Thomas P. Hanafan, Mayor

ATTEST: \_\_\_\_\_  
Judith H. Ridgeley, City Clerk

C.A. 6/9/08

4 D

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PREPARED BY: City Of Council Bluffs Legal Dept., 209 Pearl Street, Council Bluffs, IA 51503 328-4620  
RETURN TO: Legal Department, 209 Pearl Street, Council Bluffs, IA 51503

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### EASEMENT FOR SANITARY SEWER RIGHT OF WAY

#### *KNOW ALL PERSONS BY THESE PRESENTS:*

That MidAmerican Energy Company(hereinafter called "Grantor"), in consideration of one dollar and other valuable consideration do hereby convey unto the City of Council Bluffs, Iowa, a municipal corporation, and its assigns, (hereinafter called the "City"), a perpetual easement for the operation and maintenance of an existing 10 foot sanitary sewer line, over, through, and across the following described real estate:

A strip of land 25 feet in width, being situated in the South Half of Section 30, Township 74 North, Range 43 West of the 5<sup>th</sup> Principal Meridian, Pottawattamie County, Iowa, and being more fully described in Exhibit "A", attached hereto and hereinafter called the "Easement Area".

This easement shall be subject to the following terms and conditions:

1.     **ERECTION OF STRUCTURES PROHIBITED:** Except for the Permitted Facilities (defined below), Grantor shall not erect any improvement or structure over or within the Easement Area without obtaining the prior written consent of the City Engineer which consent shall not be unreasonably withheld or delayed. City understands that its rights under this Easement are non-exclusive and that Grantor makes no warranty of title as to the Easement Area. Additional restrictions on the use of this Easement shall be that no excavation shall occur within 15 feet of a tower foundation. The City may only excavate in the southerly 10 feet of the easement. The use of the northerly 15 feet shall be for access only.
2.     **CHANGE OF GRADE PROHIBITED:** Grantor shall not change the grade, elevation, or contour of any part of the Easement Area without obtaining the prior written consent of the City Engineer which consent shall not be unreasonably withheld or delayed.
3.     **RIGHT OF ACCESS:** City shall have the right of access to the Easement Area and have all rights of ingress and egress reasonably necessary for the use and enjoyment of the Easement Area as herein described.
4.     **REMOVAL AND REPLACEMENT:** The cost of removal and replacement of any unauthorized improvement or structures within the Easement Area, necessitated by the exercise of the rights under this easement, shall be borne by the Grantor.
5.     **SURFACE RESTORATION:** City's liability to restore the surface within the Easement Area shall be limited only to grading and seeding or restoring of Permitted Facilities if damaged by City.
6.     **PERMITTED FACILITIES:** The easement area is currently crossed by roadways, tracks and other facilities of Grantor and third parties and may be crossed in the future by additional facilities of Grantor or such third parties which are not inconsistent with City's rights under this Easement (collectively, Permitted Facilities").

7. DUTY TO REPAIR: City agrees that any drain tile, drive or access way, fence, yard or other improvements outside of or Permitted Facilities within the Easement Area which may be damaged as a result of any entry made through an exercise of the City's right of access or its rights under this Easement shall be repaired at no expense to Grantor.
8. EASEMENT RUNS WITH LAND: This easement shall be deemed to run with the land and shall be binding on Grantor and on Grantor's successors and assigns.
9. This easement and transfer is exempt from transfer tax Iowa Code Sec. 428 A.1.
10. This easement is being acquired for public purposes and Declaration of Value is not required. Iowa Code Sec. 428. A.1.

Grantor does HEREBY COVENANT with the City that Grantor has good and lawful authority to convey this Easement.

The undersigned hereby relinquishes all rights of dower, homestead, and distributive share, if any, in and to the interests conveyed by the Easement.

Words and phrases herein, including acknowledgement hereof, shall be constructed as in the singular or plural number and as masculine or feminine gender, according to context.

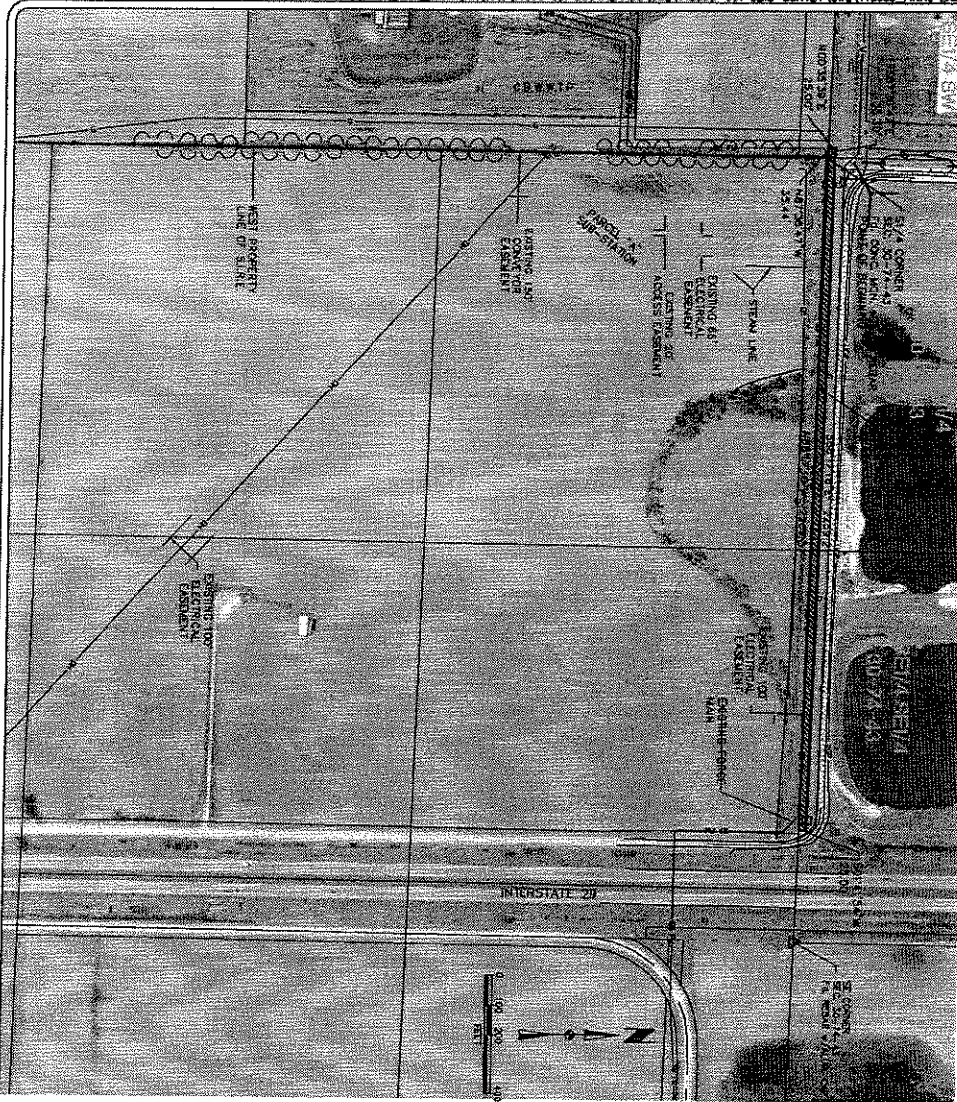
Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2800.

By: \_\_\_\_\_

STATE OF IOWA       )  
           COUNTY OF       ) ss.  
 POTTAWATTAMIE       )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me the undersigned, a Notary Public in and for said County and said State, personally appeared \_\_\_\_\_, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

\_\_\_\_\_  
 Notary Public in & for the State of Iowa



PREPARED BY: MELVIN G. SAMPLES, P.L.S., HOW ASSOCIATES INC., P.O. BOX 919, COUNCIL BLUFFS, IOWA 51502 (712)323-0530

# EXHIBIT

## LEGAL DESCRIPTION

A STRIP OF LAND, 25.00 FEET IN WIDTH, BEING SITUATE IN THE SOUTH HALF OF SECTION 30, TOWNSHIP 74 NORTH, RANGE 43 WEST OF THE 5th PRINCIPAL MERIDIAN, POTTAWATTAMIE COUNTY, IOWA, BEING MORE FULLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 30,

THENCE ALONG THE SOUTH LINE OF SAID SECTION 30, NORTH 87 DEGREES 36 MINUTES 47 SECONDS WEST, 35.44 FEET;

THENCE NORTH 00 DEGREES 35 MINUTES 39 SECONDS EAST, 25.00 FEET;

THENCE SOUTH 87 DEGREES 36 MINUTES 47 SECONDS EAST, 35.30 FEET;

THENCE SOUTH 88 DEGREES 17 MINUTES 18 SECONDS EAST, 2299.21 FEET TO A POINT ON A WEST LINE OF AN EXISTING WATER MAIN EASEMENT RECORDED IN BOOK 102, PAGE 14198;

THENCE ALONG SAID WEST LINE, SOUTH 01 DEGREE 41 MINUTES 54 SECONDS WEST, 2259.37 FEET TO THE POINT OF BEGINNING.

SAID STRIP CONTAINS AN AREA OF 1.317 ACRES, MORE OR LESS.



I hereby certify that this land surveying document was prepared and printed according to the rules and regulations of the State of Iowa, and that I am a duly Licensed Land Surveyor under the laws of the State of Iowa. My license number is 11069.

MELVIN G. SAMPLES  
 License Number: 11069  
 Date: 2008  
 Page or sheet covered by this seal: 1 OF 1



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## City of Council Bluffs Project No. FY \_\_\_\_\_

### EASEMENT FOR PUBLIC AND PRIVATE UTILITIES RIGHT OF WAY

#### *KNOW ALL PERSONS BY THESE PRESENTS:*

That MidAmerican Energy Company, and their successors or assigns, (hereinafter called "Grantor"), for good and valuable consideration, the receipt and sufficiency of which are acknowledged, do hereby convey unto the City of Council Bluffs, Iowa, a municipal corporation, and its agents, contractors, grantees and assigns, (hereinafter called the "City"), a perpetual public and private utilities easement (hereinafter called the "Easement") over, under, through, and across the below-described real estate.

A strip of land 25 feet in width, being situated in the South Half of Section 30, Township 74 North, Range 43 West of the 5<sup>th</sup> Principal Meridian, Pottawattamie County, Iowa, and being more fully described in Exhibit "A", attached hereto and hereinafter called the "Easement Area".

This Easement shall be subject to the following terms and conditions:

**USE OF EASEMENT AREA:** Grantor and City understand and agree that the Easement Area described herein creates an area for the purposes of constructing, reconstructing, operating, maintaining and removing public and private utilities and lines ("Utilities Corridor").

**COLOCATION:** In addition to the public uses of the Utilities Corridor within the Easement Area by the City as described in this Easement, Grantor and City agree that the City shall have the absolute right, at its sole discretion, to designate or otherwise allow for and permit private sanitary sewer lines (including, but not limited to gray water lines and related appurtenances), private storm sewer lines, private electric lines, private water lines, private fiber optic lines and cables and other private utility or private service lines, poles, lines, private fiber optic lines and cables and other private utility or private service lines, poles, equipment and appurtenances within the Easement Area (the "Colocated Utilities") and to allow those Colocated Utilities to enjoy all of the rights and privileges of the Easement granted herein, and be subject to all applicable terms and conditions of this Easement, without the necessity of any approval or consent of Grantor or its successors in interest of assigns. If requested by an owner of Colocated Utilities, the City shall have the right to further confirm the rights and privileges granted in this paragraph regarding the Utilities Corridor by granting a written sub-easement from the City to the owner of the Colocated Utilities. If a sub-easement is requested of the City by any owner of the Colocated Utilities, it shall be consistent with the terms and conditions of this paragraph, as well as other applicable terms and conditions of this Easement, and shall be filed by the owner of the Colocated Utilities with the Recorder of Pottawattamie County, Iowa, and thereafter shall be deemed to run with the land perpetually.

**TEMPORARY CONSTRUCTION EASEMENT:** In addition, the owners, agents, employees, and contractors of the City or the Colocated Utilities shall automatically have a temporary construction easement during the three years following the execution of this document, without the need for further grant of authority, for a period not to exceed eighteen (18) months for each installation of facilities in the Utilities Corridor over a reasonable area of Grantor's land adjoining the Easement Area as depicted in the Attachment A in order to gain access for construction and to install the utilities within the Utilities Corridor; provided, however, that if the use of the temporary construction easement disturbs Grantor's adjoining land, the City or the owner of the Colocated Utilities, as the case may be, shall be responsible to restore the disturbed area within thirty (30) days

following completion of construction to a condition reasonably comparable to that which existed prior to construction and to also compensate Grantor in a reasonable fashion for damage to crops, if any, as well as damage to trees, shrubs, or landscaping which cannot be restored, which payment shall be made not later than thirty (30) days after the date of damage. The three year term of this temporary construction easement may be extended by a period of up to 18 months so long as an installation of facilities within this corridor was commenced within the initial three year term.

**ERECTION OF STRUCTURES PROHIBITED:** Grantor shall not erect any improvement or structure over or within the Easement Area without obtaining the prior written consent of the City Engineer.

**EXCAVATION/CHANGE OF GRADE PROHIBITED:** Grantor shall not change the grade, elevation, or contour of any part of the Easement Area without obtaining the prior written consent of the City Engineer. No excavation shall occur within 15 feet of the tower foundation. The City may excavate in the Southerly 10 feet.

**RIGHT OF ACCESS:** City and all entities utilizing the Easement pursuant to paragraph 1 above shall have the right of access to the Easement Area and have all rights of ingress and egress reasonably necessary for the use and enjoyment of the Easement Area as herein described. It should be noted that the Northerly 15 feet shall be used for access only.

**REMOVAL AND REPLACEMENT:** The cost of removal and replacement of any unauthorized improvement or structures within the Easement Area other than surface parking or private drive, necessitated by the exercise of the rights under this Easement, shall be borne by the Grantor or their successors or assigns.

**SURFACE RESTORATION:** The liability to restore the surface within the Easement Area, other than surface parking or private drive, as well as any area disturbed by virtue of the temporary construction easement described above in paragraph 1, shall be limited only to grading and seeding by the City or any entity utilizing the Easement pursuant to paragraph 1 above, as the case may be.

**DUTY TO REPAIR:** Any drain tile, drive or access way, fence, yard or other improvements outside of the Easement Area which may be damaged as a result of any entry made through an exercise of the City's right of access shall be repaired at no expense to Grantor by the City or the entity utilizing the Easement pursuant to paragraph 1 above, as the case may be.

**EASEMENT RUNS WITH LAND:** This easement shall be deemed to run with the land and shall be binding on Grantor and on Grantor's successors and assigns.

This easement and transfer is exempt from transfer tax Iowa Code Sec. 428 A.1.

This easement is being acquired for public purposes and a Declaration of Value is not required. Iowa Code Sec. 428 A.1.

Grantor does **HEREBY COVENANT** with the City that Grantor holds said real estate described in this Easement by title in fee simple; that Grantor has good and lawful authority to convey the same; and said Grantor covenants to **WARRANT AND DEFEND** the said premises against the lawful claims of all persons whomsoever.

The undersigned hereby relinquishes all rights of dower, homestead, and distributive share, if any, in and to the interests conveyed by the Easement.

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Words and phrases herein, including acknowledgement hereof, shall be constructed as in the singular or plural number and as masculine or feminine gender, according to context.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

By: \_\_\_\_\_

STATE OF IOWA        )

COUNTY OF ) ss.

POTTAWATTAMIE    )

On this \_ day of \_\_\_\_\_, 2008, before me the undersigned, a Notary Public in and for said County and said State, personally appeared \_\_\_\_\_, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

\_\_\_\_\_  
Notary Public in & for the State of Iowa

**CONSENT BY MORTGAGEE**

The undersigned Mortgagee holding a mortgage lien on the real estate described in Attachment "A" to this Easement dated the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and filed on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the records of the Recorder of Pottawattamie County, Iowa, (the "Mortgage") hereby consents to the Easement granted herein by Grantor and covenants and agrees that any enforcement action taken by the Mortgagee under the Mortgage, including, but not limited to, foreclosure or granting a deed in lieu of foreclosure, shall in no way terminate, abrogate, or affect the Easement granted by Grantor and said Easement, and all rights, privileges, and duties under the Easement, shall thereafter remain in full force and effect.

**MORTGAGEE:**

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_, SS

On the \_\_\_ day of \_\_\_\_\_, 2008, before the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ who is the

\_\_\_\_\_ of \_\_\_\_\_, and who executed the  
foregoing Consent by Mortgagee.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

[illegible]

**Council Communication**  
**June 9, 2008 City Council Meeting**

Department: Community Development	Ordinance No.: N/A	
Case/Project No.: URN-08-001	Resolution No.: <u>08-165</u>	Public Hearing: <u>June 9, 2008</u>
<b>Subject/Title</b>		
Proposed Old Airport Urban Renewal Plan Amendments		
<b>Location</b>		
South of 35 <sup>th</sup> Avenue and north of Wright Road, from the South Expressway to the southeastern edge of the Lake Manawa Antiques property		
<b>Background/Discussion</b>		
<p><u>Background</u></p> <p>In February of 2006, City Council adopted the Old Airport Urban Renewal Plan in order to accommodate the Metro Crossing retail project. The urban renewal originally only contained land north of Highway 275/92, from Interstate 29 to the South Expressway. However, this urban renewal plan now needs amended to encourage an additional economic development project.</p> <p><u>Discussion</u></p> <p>The amendment to the plan would add land south of Highway 275/92, from the South Expressway to eastern edge of the Lake Manawa Antiques property. This would include the Tractor Supply store, Telmar Allied LLC, American Gramophone and Lake Manawa Antiques. Telmar Allied LLC is considering expanding their business in Council Bluffs and possible incentives discussed include the Targeted Jobs Withholding Tax Credit Program. This program provides for a diversion of employee withholding taxes from the State to the City and then back to the company to utilize for project expenses. The Targeted Jobs Withholding Tax Credit Program requires a separate withholding agreement and development agreement that specifically addresses the Withholding Program. Both of these agreements will be brought before the City Council separately. However, prior to applying for benefits under the Targeted Jobs Withholding Tax Credit Program, the project/business must be located in an urban renewal area; creating the need for this amendment.</p> <p>On April 28, 2008, the City Council passed a resolution of necessity (Resolution 08-134), which directed staff to initiate the process of amending the Old Airport Urban Renewal Project Area. This resolution established the following actions and timeframes:</p> <ul style="list-style-type: none"> <li>5-13-08 City Planning Commission hearing and review</li> <li>5-22-08 Consultation meeting to be held with other taxing jurisdictions</li> <li>6-9-08 City Council public hearing on the amended urban renewal plan</li> </ul> <p>The consultation meeting was held on May 22, 2008 and no individuals or groups appeared at the hearing. Additionally, no written correspondence has been received by the Community Development Department either in support or against the proposed amendment.</p>		
<b>Recommendation</b>		
The Community Development Department recommends approval of the proposed Amendment #1 to the Old Airport Urban Renewal Plan and Area.		
<b>City Planning Commission Public Hearing – May 13, 2008</b>		
The following appeared before the Planning Commission in favor of the request: Gayle Malmquist, Community Development Department		

**Council Communication**  
**June 9, 2008 City Council Meeting**

The following appeared before the Planning Commission in opposition to the request: None.

**City Planning Commission Recommendation**

Concur with the Community Development Department to approve Amendment #1 to the Old Airport Urban Renewal Plan and Area, as presented.

VOTE:   Aye   10       Nay   0       Abstain   0       Absent   1       Motion   Carried.

**Attachments**

- 1) Amendment #1 to the Old Airport Urban Renewal Plan and Area
- 2) Consultation proceedings
- 3) Resolution adopting Amendment #1

Submitted by: Brenda Carrico, Program Coordinator, Community Development Department

Approved by: Donald D. Gross, Director, Community Development Department

(This Notice to be posted)

NOTICE AND CALL OF PUBLIC MEETING

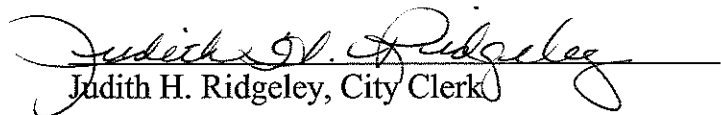
Governmental Body: The City Council of Council Bluffs, Iowa.  
Date of Meeting: June 9, 2008.  
Time of Meeting: 7:00 o'clock P.M.  
Place of Meeting: Council Chambers, City Hall, 209 Pearl Street,  
Council Bluffs, Iowa.

PUBLIC NOTICE IS HEREBY GIVEN that the above mentioned governmental body will meet at the date, time and place above set out. The tentative agenda for said meeting is as follows:

- X Public Hearing on proposed Amendment No. 1 to the Old Airport Urban Renewal Plan of the City of Council Bluffs, Iowa.
- X Resolution determining an area of the City to be an economic development area, and that the rehabilitation, conservation, redevelopment, development, or a combination thereof, of such area is necessary in the interest of the public health, safety or welfare of the residents of the City; designating such area as appropriate for an Urban Renewal Project; and adopting Amendment No. 1 to the Old Airport Urban Renewal Plan therefor.

Such additional matters as are set forth on the additional \_\_\_\_\_ page(s) attached hereto.  
(number)

This notice is given at the direction of the Mayor pursuant to Chapter 21, Code of Iowa, and the local rules of said governmental body.

  
Judith H. Ridgeley, City Clerk



June 9, 2008

The City Council of Council Bluffs, Iowa, met in regular session, in the Council Chambers, City Hall, 209 Pearl Street, Council Bluffs, Iowa, at 7:00 o'clock P.M. on the above date. There were present Mayor Thomas P. Hanafan, in the Chair, and the following named Council Members:

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Absent: 

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\* \* \* \* \*

This being the time and place fixed for a public hearing on the matter of the adoption of the proposed Amendment No. 1 to the Old Airport Urban Renewal Plan, the Mayor first asked for the report of the Designated Representative with respect to the consultation held with the affected taxing entities to discuss the proposed Amendment. The Council was informed that the consultation was duly held as ordered by the Council, and that no written recommendations were received from affected taxing entities. The report of the Designated Representative with respect to the consultation was placed on file for consideration by the Council.

The Council also was informed that the proposed Amendment had been approved by the Planning and Zoning Commission as being in conformity with the general plan for development of the City as a whole, as set forth in the minutes or report of said Commission previously placed on file for consideration by the Council.

The Mayor then asked the City Clerk whether any written objections had been filed with respect to the proposed Amendment, and the City Clerk reported that \_\_\_\_\_ written objections thereto had been filed. The Mayor then called for any oral objections to the adoption of the proposed Amendment No. 1 to the Old Airport Urban Renewal Plan and \_\_\_\_\_ were made. The public hearing was then closed.

[Attach summary of objections here]

Council Member \_\_\_\_\_ then introduced the following Resolution entitled "RESOLUTION DETERMINING AN AREA OF THE CITY TO BE AN ECONOMIC DEVELOPMENT AREA, AND THAT THE REHABILITATION, CONSERVATION, REDEVELOPMENT, DEVELOPMENT, OR A COMBINATION THEREOF, OF SUCH AREA IS NECESSARY IN THE INTEREST OF THE PUBLIC HEALTH, SAFETY OR WELFARE OF THE RESIDENTS OF THE CITY; DESIGNATING SUCH AREA AS APPROPRIATE FOR AN URBAN RENEWAL PROJECT; AND ADOPTING AMENDMENT NO. 1 TO THE OLD AIRPORT URBAN RENEWAL PLAN THEREFOR" and moved that the same be adopted. Council Member \_\_\_\_\_ seconded the motion to adopt. The roll was called and the vote was,

AYES: \_\_\_\_\_

\_\_\_\_\_

NAYS: \_\_\_\_\_

Whereupon, the Mayor declared the Resolution duly adopted as follows:

**RESOLUTION NO. 08-165**

RESOLUTION DETERMINING AN AREA OF THE CITY TO BE AN ECONOMIC DEVELOPMENT AREA, AND THAT THE REHABILITATION, CONSERVATION, REDEVELOPMENT, DEVELOPMENT, OR A COMBINATION THEREOF, OF SUCH AREA IS NECESSARY IN THE INTEREST OF THE PUBLIC HEALTH, SAFETY OR WELFARE OF THE RESIDENTS OF THE CITY; DESIGNATING SUCH AREA AS APPROPRIATE FOR AN URBAN RENEWAL PROJECT; AND ADOPTING AMENDMENT NO. 1 TO THE OLD AIRPORT URBAN RENEWAL PLAN THEREFOR

WHEREAS, by Resolution No. 06-57, adopted February 27, 2006 this Council found and determined that certain areas located within the City are eligible and should be designated as an urban renewal area under Iowa law, and approved and adopted the Old Airport Urban Renewal Plan (the "Plan") for the Old Airport Urban Renewal Plan

Area (the "Old Airport Urban Renewal Area") described therein, which Plan is on file in the office of the Recorder of Pottawattamie County; and

WHEREAS, the Old Airport Urban Renewal Area currently includes and consists of:

Beginning at the intersection of the South right-of-way line of Highway 275/92 and the Westerly right-of-way line of Interstate 29; thence westerly along said South right-of-way line to the West right-of-way line of the South Expressway (Highway 192); thence north along said West right-of-way line to the Northerly right-of-way line of 35th Avenue; thence easterly, north and east along said Northerly right-of-way line to the West 1/4 Corner of Section 7-74-43; thence continuing east along the North line of the SW1/4 of said Section 7-74-43 to the Westerly right-of-way line of Interstate 29; thence southeasterly along said Westerly line to the South right-of-way line of Highway 275/92 and the Point of Beginning.

WHEREAS, the proposed urban renewal area does not include land classified as agricultural land and, therefore, written permission of the current owners was not obtained; and

WHEREAS, a proposed Amendment No. 1 to the Plan has been prepared, which proposed Amendment is on file in the office of the City Clerk and which is incorporated herein by reference, the purpose of which is to set forth and include within the Plan additional land, as follows:

Beginning at the intersection of the South right-of-way line of Highway 275/92 and the East line of the SW1/4 SE1/4 of Section 12-74-44; thence south to the South line of said SW1/4 SE1/4; thence west along said south line to the West right-of-way line of Piute Street; thence north to the South right-of-way line of Highway 275/92; thence Easterly to the Point of Beginning.

WHEREAS, it is desirable that these areas be redeveloped as part of the overall redevelopment area covered by said Plan;

WHEREAS, the Iowa statutes require the City Council to submit the proposed Amendment No. 1 to the Old Airport Urban Renewal Plan to the Planning and Zoning Commission for review and recommendation as to its conformity with the general plan for development of the City as a whole, prior to City Council approval thereof; and

WHEREAS, adoption of Amendment No. 1 has been approved by the Planning and Zoning Commission for the City as being in conformity with the general plan for development of the City as a whole, as evidenced by its written report and recommendation filed herewith, which report and recommendation is hereby accepted, approved in all respects and incorporated herein by this reference; and

WHEREAS, by resolution 08-134 adopted on April 28, 2008, this Council directed that a consultation be held with the designated representatives of all affected taxing entities to discuss the proposed Amendment No. 1 to the Old Airport Urban Renewal Plan and the division of revenue described therein, and that notice of said consultation and a copy of the proposed Amendment No. 1 to the Old Airport Urban Renewal Plan be sent to all affected taxing entities; and

WHEREAS, pursuant to such notice, the consultation was duly held as ordered by the City Council and all required responses to the recommendations made by the affected taxing entities, if any, have been timely made as set forth in the report of the Designated Representative filed herewith and incorporated herein by this reference, which report is in all respects approved; and

WHEREAS, by said resolution this Council also set a public hearing on the adoption of Amendment No. 1 to the Old Airport Urban Renewal Plan for this meeting of the Council, and due and proper notice of said public hearing was given, as provided by law, by timely publication in the "Daily Nonpareil", which notice set forth the time and place for this hearing and the nature and purpose thereof; and

WHEREAS, in accordance with said notice, all persons or organizations desiring to be heard on said proposed Amendment No. 1 to the Old Airport Urban Renewal Plan, both for and against, have been given an opportunity to be heard with respect thereto and due consideration has been given to all comments and views expressed to this Council in connection therewith and said public hearing has been closed.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS, IOWA:

Section 1. That the findings and conclusions set forth or contained in the Plan and Amendment No. 1 thereto concerning the area of the City of Council Bluffs, Iowa described in the preamble hereof, be and the same are hereby ratified and confirmed in all respects as the findings of this Council for this area.

Section 2. This Council further finds:

a. Although no relocation is anticipated, feasible method exists for the relocation of any families who will be displaced from the Old Airport Urban Renewal Area into decent, safe and sanitary dwelling accommodations within their means and without undue hardship to such families;

b. The Plan and Amendment No. 1 to the Old Airport Urban Renewal Plan of the City of Council Bluffs, Iowa, conform to the general plan for the development of the City as a whole; and

c. No acquisition is anticipated by the City, however, as to any areas of open land included within the Old Airport Urban Renewal Area to be acquired by the City:

i. Residential use is not expected, however, with reference to any portions thereof which are to be developed for residential uses, this City Council hereby determines that a shortage of housing of sound standards and design with decency, safety and sanitation exists within the City; that the acquisition of the area for residential uses is an integral part of and essential to the program of the municipality; and that one or more of the following conditions exist:

A. That the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas, including other portions of the urban renewal area.

B. That conditions of blight in the municipality and the shortage of decent, safe and sanitary housing cause or contribute to an increase in and spread of disease and crime, so as to constitute a menace to the public health, safety, morals, or welfare.

C. That the provision of public improvements related to housing and residential development will encourage housing and residential development which is necessary to encourage the retention or relocation of industrial and commercial enterprises in this state and its municipalities.

D. The acquisition of the area is necessary to provide for the construction of housing for low and moderate income families.

ii. Non-residential use is expected, and with reference to those portions thereof which are to be developed for non-residential uses, the City Council hereby determines that such non-residential uses are necessary and appropriate to facilitate the proper growth and development of the City in accordance with sound planning standards and local community objectives.

Section 3. That the Old Airport Urban Renewal Area is an economic development area within the meaning of Iowa Code Chapter 403; that such area is eligible for designation as an urban renewal area and otherwise meets all requisites under the provisions of Chapter 403 of the Code of Iowa, and that the rehabilitation, conservation, redevelopment, development, or a combination thereof, of such area is necessary in the interest of the public health, safety or welfare of the residents of this City.

Section 4. That Amendment No. 1 to the Old Airport Urban Renewal Plan of the City of Council Bluffs, Iowa be and the same is hereby approved and adopted as "Amendment No. 1 to the Old Airport Urban Renewal Plan for the City of Council Bluffs, Iowa"; Amendment No. 1 to the Old Airport Urban Renewal plan of the City of Council Bluffs, Iowa, is hereby in all respects approved; and the City Clerk is hereby directed to file a certified copy of said Amendment No. 1 with the proceedings of this meeting.

Section 5. That the Plan, as so amended, for the Old Airport Urban Renewal Area shall be in full force and effect from the date of this Resolution until the later of the date of termination set forth in the Plan as so amended, or the date on which payment of all obligations issued or advances made to carry out the purposes thereof shall be fully provided for. Said proposed Amendment No. 1 to the Old Airport Urban Renewal Plan shall be forthwith certified by the City Clerk, along with a copy of this Resolution, to the Recorder for Pottawattamie County, Iowa, to be filed and recorded in the manner provided by law.

Section 6. That all other provisions of the Plan not affected or otherwise revised by the terms of Amendment No. 1 thereto, as well as Resolution No. 08-134 previously adopted by this City Council be and the same are hereby ratified, confirmed and approved in all respects.

PASSED AND APPROVED this 9<sup>th</sup> day of June, 2008.

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Thomas P. Hanafan, Mayor

ATTEST:

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Judith H. Ridgeley, City Clerk

STATE OF IOWA )  
 ) SS  
COUNTY OF POTTAWATTAMIE )

I, the undersigned City Clerk of Council Bluffs, Iowa, do hereby certify that attached is a true and complete copy of the portion of the corporate records of the Municipality showing proceedings of the Council, and the same is a true and complete copy of the action taken by the Council with respect to the matter at the meeting held on the date indicated in the attachment, which proceedings remain in full force and effect, and have not been amended or rescinded in any way; that meeting and all action thereat was duly and publicly held in accordance with a notice of meeting and tentative agenda, a copy of which was timely served on each member of the Council and posted on a bulletin board or other prominent place easily accessible to the public and clearly designated for that purpose at the principal office of the Council (a copy of the face sheet of the agenda being attached hereto) pursuant to the local rules of the Council and the provisions of Chapter 21, Code of Iowa, upon reasonable advance notice to the public and media at least twenty-four hours prior to the commencement of the meeting as required by law and with members of the public present in attendance; I further certify that the individuals named therein were on the date thereof duly and lawfully possessed of their respective city offices as indicated therein, that no Council vacancy existed except as may be stated in the proceedings, and that no controversy or litigation is pending, prayed or threatened involving the incorporation, organization, existence or boundaries of the City or the right of the individuals named therein as officers to their respective positions.

WITNESS my hand and the seal of the Municipality hereto affixed this 9th day of June, 2008.

Judith H. Ridgeley, City Clerk.

SEAL



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# **AMENDMENT # 1 TO THE OLD AIRPORT URBAN RENEWAL AREA**

City of Council Bluffs, Iowa  
June 2008

**AMENDMENT #1 TO THE OLD AIRPORT  
URBAN RENEWAL PLAN  
CITY OF COUNCIL BLUFFS, IOWA**

The Old Airport Urban Renewal Plan, adopted in 2006, is being amended to accomplish two objectives:

1. To add new area to the Old Airport Urban Renewal Area; and
2. To identify proposed project area activities not specifically identified in the existing plan.

A description of the area being added as a result of this Amendment is attached as Exhibit A, a description of the entire Old Airport Urban Renewal Area, as amended, is attached as Exhibit B, and the entire Old Airport Urban Renewal Area, as amended, is illustrated on Exhibit C.

Except as modified by this Amendment, the provisions of the original 2006 Old Airport Urban Renewal Plan, are hereby ratified, confirmed and approved and shall remain in full force and effect as provided therein.

**DISTRICT DESIGNATION**

The original Old Airport Urban Renewal Area, adopted in 2006, was designated as an economic development area appropriate for commercial development. The City is designating the new area being added as a result of this Amendment as an economic development area appropriate for industrial development.

**DEVELOPMENT PLAN**

Council Bluffs has a general plan for the physical development of the City outlined in the 1994 Council Bluffs Comprehensive Plan. The goals and objectives of the Old Airport Urban Renewal Plan are consistent with the land use policy, which was adopted as part of the planning process. The area being added as a result of this Amendment is currently zoned C-2 Commercial. No changes to zoning for the area being added as a result of this Amendment are anticipated at this time.

**PROPOSED PROJECT AREA ACTIVITIES**

In addition to the proposed project area activities already identified in the original Old Airport Urban Renewal Plan, proposed project area activities in connection with the area being added by this Amendment include the City exercising its powers as a Pilot Project City and providing for withholding agreements as

outlined in Section 403.19A, Code of Iowa. However, at this time the City does not anticipate providing for a division of revenue pursuant to Section 403.19 in connection with the area being added by this Amendment. Accordingly, no discussion of the City's current general obligation debt, current constitutional debt limit, or the proposed amount of indebtedness to be incurred, is required by Section 403.17(24)(c), Code of Iowa in connection with this amendment.

### **EFFECTIVE PERIOD**

The effective period of the original Old Airport Urban Renewal Area shall remain unchanged. With respect to the area being added by this amendment, because no division of revenue under Section 403.19A, Code of Iowa, is anticipated at this time, the 20 year sunset requirement in Section 403.17(10), Code of Iowa does not apply. However, under current law, the City shall not enter into a withholding agreement under Section 403.19A, Code of Iowa, after June 30, 2010.

### **URBAN RENEWAL PLAN AMENDMENTS**

This Urban Renewal Plan may be amended from time to time to include change in the area, to modify goals or types of renewal activities, or to amend property acquisition and disposition provisions.

The City Council may amend this plan by resolution after holding a public hearing on the proposed change in accordance with applicable state law.

## **EXHIBIT A**

### **ADDITIONAL AREA TO BE ADDED TO THE EXISTING URBAN RENEWAL AREA:**

Beginning at the intersection of the South right-of-way line of Highway 275/92 and the East line of the SW1/4 SE1/4 of Section 12-74-44; thence south to the South line of said SW1/4 SE1/4; thence west along said south line to the West right-of-way line of Piute Street; thence north to the South right-of-way line of Highway 275/92; thence Easterly to the Point of Beginning.

## **EXHIBIT B**

The entire Old Airport Urban Renewal Area, as amended, is described as follows:

### **LEGAL DESCRIPTION OF THE EXISTING URBAN RENEWAL AREA:**

Beginning at the intersection of the South right-of-way line of Highway 275/92 and the Westerly right-of-way line of Interstate 29; thence westerly along said South right-of-way line to the West right-of-way line of the South Expressway (Highway 192); thence north along said West right-of-way line to the Northerly right-of-way line of 35<sup>th</sup> Avenue; thence easterly, north and east along said Northerly right-of-way line to the West 1/4 Corner of Section 7-74-43; thence continuing east along the North line of the SW1/4 of said Section 7-74-43 to the Westerly right-of-way line of Interstate 29; thence southeasterly along said Westerly line to the South right-of-way line of Highway 275/92 and the Point of Beginning, along with :

### **ADDITIONAL AREA TO BE ADDED TO THE EXISTING URBAN RENEWAL AREA:**

Beginning at the intersection of the South right-of-way line of Highway 275/92 and the East line of the SW1/4 SE1/4 of Section 12-74-44; thence south to the South line of said SW1/4 SE1/4; thence west along said south line to the West right-of-way line of Piute Street; thence north to the South right-of-way line of Highway 275/92; thence Easterly to the Point of Beginning.

**EXHIBIT C**

**Old Airport Urban  
Renewal Plan**

ILLUSTRATION 1  
LOCATION MAP



## **CITY OF COUNCIL BLUFFS**

### **PROCEEDINGS OF CONSULTATION BETWEEN THE CITY AND AFFECTED TAXING ENTITIES**

#### **OLD AIRPORT URBAN RENEWAL PLAN AMENDMENT #1**

The consultation between the City and affected taxing entities on the Old Airport Urban Renewal Plan – Amendment #1 was held on May 22, 2008, at 10:00 a.m. The meeting was held in the Community Development Department Conference Room, 403 Willow Avenue, Council Bluffs, Iowa. Donald D. Gross, the City's Community Development Director served as the representative for the consultation meeting. Brenda Carrico was also in attendance.

No individuals or groups appeared at the consultation hearing.

No written correspondence has been received by the Community Development Department prior to the consultation meeting.

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Brenda Carrico, Program Coordinator  
Community Development Department